

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/1. LEGISLATION/(1) DOMESTIC LEGISLATION/1. The principal legislation.

ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION,

1. LEGISLATION

(1) DOMESTIC LEGISLATION

1. The principal legislation.

Environmental quality and public health¹ legislation in the United Kingdom² is wide-ranging and diverse, and includes provisions relating to integrated pollution prevention and control³, air quality and air pollution⁴, waste management⁵, litter⁶, contaminated land⁷, genetically modified organisms⁸, statutory nuisances⁹, noise¹⁰, the destruction of pests¹¹, the prevention and control of disease¹² and sewers and drains¹³.

Formerly, the principal statutes were the Public Health Acts 1936 and 1961¹⁴. These Acts have been the subject of considerable amendment, but certain provisions remain relevant¹⁵. The main statutory provisions are now to be found in the Control of Pollution Act 1974¹⁶, the Refuse Disposal (Amenity) Act 1978¹⁷, the Building Act 1984¹⁸, the Public Health (Control of Disease) Act 1984¹⁹, the Control of Pollution (Amendment) Act 1989²⁰, the Environmental Protection Act 1990²¹, the Water Industry Act 1991²², the Clean Air Act 1993²³, the Noise and Statutory Nuisance Act 1993²⁴, the Environment Act 1995²⁵, the Noise Act 1996²⁶, the Pollution Prevention and Control Act 1999²⁷, the Water Act 2003²⁸, the Clean Neighbourhoods and Environment Act 2005²⁹, the Natural Environment and Rural Communities Act 2006³⁰, the Climate Change and Sustainable Energy Act 2006³¹ and the Climate Change Act 2008³². Some of these provisions also apply to vessels³³ lying in inland or coastal waters³⁴. This title also deals specifically with statutory provisions on pollution of water³⁵, shipping and pollution³⁶ and environmental duties in fuel and energy sectors³⁷. It should be noted that certain functions under provisions in many of these statutes are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008³⁸.

In certain districts there are local Acts in operation containing provisions relating to public health and these are not covered in this work³⁹.

Some legislation relating to environmental matters is dealt with elsewhere in this work⁴⁰.

1 The term 'public health' is appropriate to describe the scope of environmental health functions administered by local authorities, as distinct from those functions of personal health under the national health service dealt with elsewhere in this work (see **HEALTH SERVICES; SOCIAL SERVICES AND COMMUNITY CARE**) and from functions concerning water supply (see **WATER AND WATERWAYS**). However, the division is not always clear cut.

2 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3. 'England' means, subject to any alteration of boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 5, 24), Greater London and the Isles of Scilly: Interpretation Act 1978 s 5, Sch 1. 'Wales' means the combined area of the counties which were created

by the Local Government Act 1972 s 20 (as originally enacted) (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (consequential alteration of boundary following alteration of watercourse) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 90): Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 Sch 2 para 9). As to local government areas see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; and as to boundary changes see **LOCAL GOVERNMENT** vol 69 (2009) PARA 56 et seq. As to Greater London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29.

3 See PARA 158 et seq.

4 See PARA 190 et seq.

5 See PARA 620 et seq.

6 See PARA 717 et seq.

7 See PARA 761 et seq.

8 See PARA 792 et seq.

9 See **NUISANCE**.

10 See PARA 817 et seq.

11 See PARA 855 et seq.

12 See PARA 884 et seq. As to the treatment of disease generally see **HEALTH SERVICES**.

13 See PARA 998 et seq.

14 Ie the Public Health Act 1936 and the Public Health Act 1961. The Public Health Act 1936 consolidated with amendments and additions most of the previous legislation on matters of public health contained in the Public Health Acts 1875 to 1925. As to the Public Health Acts 1875 to 1925 see PARA 2. In addition to the substantive powers for regulating public health, the Public Health Act 1936 contains an extensive framework of machinery powers for local authorities covering inter alia notices, entry upon premises, recovery of expenses and the prosecution of offences: see PARA 113 et seq. As to the meaning of 'local authority' see PARA 99. Generally, the authorities having the duty to carry the Public Health Act 1936 into execution are: (1) except in Wales, in a county, the county council as respects certain matters and the district councils as respects all other matters, without prejudice, however, to the exercise by a parish council of any powers conferred upon such councils; (2) in Wales, the county council or county borough council as respects all matters, without prejudice, however, to the exercise by a community council of any powers conferred upon such a council; (3) in a London borough, the borough council; (4) in the City of London, the Common Council; and (5) in the Inner Temple and the Middle Temple, the Sub-Treasurer and the Under Treasurer thereof respectively: see s 1(1) (substituted by the Local Government Act 1972 Sch 14 Pt I para 1; and amended by the National Health Service Reorganisation Act 1973 Sch 4 para 2; and the Local Government (Wales) Act 1994 Sch 9 para 3, Sch 18).

The Public Health Act 1961 supplemented the provisions of the Public Health Act 1936, and replaced various local Acts of Parliament and byelaws. The provisions of the Public Health Act 1961 relating to sanitation and buildings (ie Pt II (ss 17-37)) (see PARAS 759, 855, 858, 1078) are to be construed as one with the similar provisions of the Public Health Act 1936 (ie Pt II (ss 33-90)) (see eg PARAS 855 et seq, 980 et seq): see the Public Health Act 1961 s 1(1).

15 See eg PARA 113 et seq.

16 See PARAS 131 et seq, 620, 724-725, 819 et seq.

17 See PARA 741 et seq.

18 See **BUILDING**. See also eg PARAS 987, 989, 995.

19 See PARAS 102 et seq, 137 et seq, 884 et seq.

20 See PARA 709 et seq.

21 The Environmental Protection Act 1990 covers matters such as pollution control (see PARA 158 et seq), waste management (see PARA 620 et seq), contaminated land (see PARA 761 et seq), genetically modified organisms (see PARA 792 et seq), and statutory nuisances (see **NUISANCE**).

22 See PARA 998 et seq; and **WATER AND WATERWAYS**. See also the Water Resources Act 1991; PARA 291 et seq; and **WATER AND WATERWAYS**.

23 See PARA 207 et seq.

24 See PARA 817 et seq.

25 See eg PARAS 68 et seq, 148 et seq, 192 et seq.

26 See PARA 848 et seq.

27 See PARAS 186-188.

28 See **WATER AND WATERWAYS**.

29 The Clean Neighbourhoods and Environment Act 2005 is intended, with the Anti-social Behaviour Act 2003 (see eg PARAS 728, 733, 735-736), to improve the legislative framework for the provision and maintenance of a clean and safe local environment. It includes, inter alia, provisions relating to abandoned vehicles (see PARA 743 et seq), the offence of dropping litter (see PARAS 721-722, 733), local authority notices (see PARA 727), free distribution of printed matter (see PARA 728), graffiti and fly-posting (see PARAS 735-736), transport of waste (see PARA 709 et seq), deposit and disposal of waste (see PARA 655), offences relating to documentation (see PARA 645), power to search and seize vehicles (see PARA 659), local authority waste collection and disposal (see PARAS 620, 696, 699, 702), audible intruder alarms (see PARA 843 et seq), noise from premises (see PARAS 848, 852), statutory noise notices (see **NUISANCE** vol 78 (2010) PARA 165 et seq), use of fixed penalty receipts (see PARAS 156-157), shopping and luggage trolleys (see PARAS 739-740), statutory nuisances (see **NUISANCE**), and pollution and contaminated land (see PARAS 186, 772).

30 The Natural Environment and Rural Communities Act 2006 contains provisions relating, inter alia, to nature conservation, wildlife, sites of special scientific interest, national parks, rights of way and inland waterways. The Act establishes an independent body, 'Natural England', which is responsible for conserving, enhancing and managing England's natural environment. This body took over the statutory functions previously carried out by English Nature, the Countryside Agency (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523) and the Department for Environment, Food and Rural Affairs' Rural Development Service. Natural England works in close partnership with other organisations and bodies that have a major role in relation to the natural environment, in particular the Environment Agency (see PARA 68 et seq), the Forestry Commission (see **FORESTRY** vol 52 (2009) PARA 52 et seq), English Heritage (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 810 et seq) and local authorities (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq). The Natural Environment and Rural Communities Act 2006 also establishes the Commission for Rural Communities, which is to promote awareness of rural needs and meeting those needs in ways that contribute to sustainable development. See further **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 527.

31 See **FUEL AND ENERGY**.

32 See PARA 259 et seq; and **FUEL AND ENERGY**.

33 'Vessel' has the same meaning as 'ship' in the Merchant Shipping Act 1995 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229), except that it includes a hovercraft within the meaning of the Hovercraft Act 1968 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 381); and 'master' is to be construed accordingly: see the Public Health Act 1936 s 343(1) (definition amended by the Merchant Shipping Act 1995 Sch 13 para 15); the Health Services and Public Health Act 1968 s 62(1) (amended by the National Health Service Reorganisation Act 1973 Sch 4 para 123); and the Public Health (Control of Disease) Act 1984 s 74 (amended by the Merchant Shipping Act 1995 Sch 13 para 69).

34 'Inland waters' includes rivers, harbours and creeks; and 'coastal waters' means waters within three nautical miles from any point on the coast measured from the low-water mark of ordinary spring tides: see the Public Health Act 1936 s 343(1); and the Public Health (Control of Disease) Act 1984 s 74. The definitions in s 74 are repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 29, Sch 15 Pt 3 from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed.

The provisions referred to in the text are: (1) the Public Health Act 1936 Pt XII (ss 275-347) (see PARA 113 et seq) and, so far as regards boats used for human habitation, the provisions relating to verminous premises and persons (ie ss 83-86) (see PARAS 855, 857 et seq); and (2) the Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) (prospectively repealed) other than ss 39-42, Pt III (ss 46-48) other than s 46, Pt V (ss 54-56) (prospectively repealed) other than s 56, and Pt VI (ss 57-79) (s 57 prospectively repealed) (see PARA 884 et seq); see the Public Health Act 1936 s 267(4) (amended by the Clean Air Act 1956 Sch 4; the Public Health (Control of Disease) Act 1984 Sch 3; and the Environmental Protection Act 1990 Sch 16 Pt III); and the Public Health (Control of Disease) Act 1984 s 9(2) (prospectively repealed). These provisions have effect in relation to any vessel which neither belongs to Her Majesty or a foreign government nor is under the command or charge of an officer holding Her Majesty's commission, as if the vessel were a house, building or premises within the district or county of the appropriate port health authority, local authority or county council and the master or other officer or person in charge were the occupier: see the Public Health Act 1936 s 267(3), (5) (s 267(3)

amended by the Local Government (Miscellaneous Provisions) Act 1982 Sch 6 para 4); and the Public Health (Control of Disease) Act 1984 s 9(3), (4) (prospectively repealed). See further **PARA 104**. 'House' means a dwelling-house, whether a private dwelling-house or not: Public Health Act 1936 s 343(1); Public Health (Control of Disease) Act 1984 s 74. In the Public Health Act 1936, 'premises' includes messuages, buildings, lands, easements and hereditaments of any tenure; and 'land' includes any interest in land and any easement or right in, to or over land: s 343(1). In the Public Health (Control of Disease) Act 1984, unless the context otherwise requires, 'premises' includes buildings, lands, easements and hereditaments of any tenure: s 74. The definitions of 'house' and 'premises' in s 74 are repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 29, Sch 15 Pt 3 from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed.

35 See **PARA 270** et seq. See also generally **WATER AND WATERWAYS**.

36 See **PARA 347** et seq. See also generally **SHIPPING AND MARITIME LAW**.

37 See **PARA 576** et seq. See also generally **FUEL AND ENERGY**.

38 See for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) **PARA 733**. The relevant statutes noted in Sch 3 include the Anti-social Behaviour Act 2003, the Clean Air Act 1993, the Clean Neighbourhoods and Environment Act 2005 Pt 2 (ss 3-17), Pt 7 (ss 69-86), the Control of Pollution Act 1974, the Control of Pollution (Amendment) Act 1989, the Environment Act 1995, the Environmental Protection Act 1990, the Food and Environment Protection Act 1985 Pt II (ss 5-15), the Litter Act 1983, the Noise Act 1996, the Noise and Statutory Nuisance Act 1993, the Pollution Prevention and Control Act 1999, the Prevention of Damage by Pests Act 1949, the Public Health Act 1936, the Public Health Act 1961, the Refuse Disposal (Amenity) Act 1978, the Vehicles (Crime Act) 2001 and the Water Resources Act 1991.

39 These Acts, being local in nature, are not set out in this work. The Secretary of State has power to amend any provision of a local Act where it appears to him that the provision in the local Act is inconsistent with or has become unnecessary in consequence of any provision of the general legislation: see the Public Health Act 1925 s 6 (amended by the Statute Law (Repeals) Act 1993); the Public Health Act 1961 s 82(1); the Control of Pollution Act 1974 s 108(3); the Environmental Protection Act 1990 s 162(4); and the Environment Act 1995 s 121. See also the Public Health Act 1875 s 303; and the Public Health Act 1936 s 317. As to the Secretary of State see **PARA 58**. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see **PARA 59**.

40 See eg **PARA 3**; and see generally **BUILDING; FUEL AND ENERGY; OPEN SPACES AND COUNTRYSIDE; TOWN AND COUNTRY PLANNING; WATER AND WATERWAYS**. See also note 1.

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2. Earlier legislation on public health.

Only a very small number of provisions of the Public Health Acts 1875 to 1925¹ containing substantive powers remain in force². Certain general and machinery powers³ remain in force to supplement the substantive powers, and certain repealed provisions of the Public Health Act 1875 continue in force so far as material for the purpose of the unrepealed provisions of that Act or any Act to be construed with it⁴. Prior to 1 April 1974 certain of the provisions of the Public Health Acts 1875 to 1925 were only operative where adopted, but, as from that date, the surviving provisions of the Acts, with very limited exceptions⁵, operate throughout England and Wales whether or not they so extended immediately before that date⁶.

The Public Health Act 1936 provides for orders, regulations, schemes, agreements etc under enactments repealed by that Act to continue to have effect as if made under the repealing Act⁷. Any powers or duties conferred or imposed by the Public Health Act 1936 are deemed to be in addition to and not in derogation of any other powers and duties conferred or imposed by Act of Parliament, law or custom; and, subject to any repeal effected by, or other express provision of, the Public Health Act 1936, all such other powers and duties may be exercised and must be performed in the same manner as if the Act had not been passed⁸. Similar provision is made in relation to the Public Health Act 1875⁹ and the Public Health (Control of Disease) Act 1984¹⁰. The Control of Pollution Act 1974 provides that nothing in that Act (except so far as expressly provided otherwise) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under that Act¹¹; nor does the Act affect any restriction imposed by or under any other enactment, whether public, local or private¹². Similar savings are contained in the Local Government (Miscellaneous Provisions) Act 1976¹³.

1 The Public Health Act 1875, the Public Health Acts Amendment Act 1890, the Public Health Acts Amendment Act 1907 and the Public Health Act 1925: see s 1(2). As to the citation of the earlier of these Acts as the 'Public Health Acts' and later, with the addition of the Public Health Acts Amendment Act 1907, as the Public Health Acts 1875 to 1907 see the Short Titles Act 1896; and the Public Health Acts Amendment Act 1907 s 2(3).

2 The following provisions remain in force: the Public Health Act 1875 s 68 (penalty for corrupting water by gas washings) (see **PARA 340**), s 153 (moving gas and water pipes) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) **PARA 400**), s 160 (naming of streets and numbering of houses) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) **PARAS 142, 145**), s 161 (lighting streets) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) **PARA 533 et seq**), s 164 (provision of pleasure grounds) (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) **PARAS 555, 556**), s 171 (incorporation of Town Police Clauses Act 1847) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) **PARA 349**), the Public Health Act 1875 s 265 (protection of members and officers from personal liability) (see **PARA 105**; and **LOCAL GOVERNMENT** vol 69 (2009) **PARAS 227, 442**), s 343, Sch 5 (interments within churches, and fences surrounding burial grounds) (see **CREMATION AND BURIAL** vol 10 (Reissue) **PARAS 1013, 1144**); the Public Health Acts Amendment Act 1890 s 37 (safety of platforms erected on public occasions) (see **BUILDING** vol 4(2) (2002 Reissue) **PARA 450**), s 40 (cabmen's shelters), s 42 (statues and monuments in streets etc) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) **PARA 566**), ss 44, 45 (public walks and pleasure grounds) (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) **PARAS 555, 556**), the Public Health Acts Amendment Act 1907 s 21 (altering street names) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) **PARA 144**), s 31 (fencing of land adjoining streets) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) **PARA 371**), s 76 (parks and pleasure ground) (see **OPEN SPACES AND COUNTRYSIDE**), ss 80, 81 (leading animals through streets; and definitions of 'public place' and 'street') (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) **PARA 504**), ss 82, 83 (byelaws as to the sea-shore and as to promenades) (see **WATER AND WATERWAYS** vol 100 (2009) **PARAS 34, 51**), s 94 (licensing of pleasure boats) (see **LOCAL GOVERNMENT** vol 69 (2009) **PARA 597**), and the Public Health Act 1925 ss 14, 16-19 (drinking fountains in streets, obstruction of main roads and premises of statutory undertakers, and naming of streets) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) **PARAS 142-144, 560**), s 26 (wires in streets) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) **PARA 1287**), s 56(5), (6) (charging for parks and pleasure grounds) (see **OPEN SPACES AND COUNTRYSIDE** vol 78

(2010) PARA 558), ss 75, 76 (byelaws as to persons waiting to enter public vehicles, public vehicles at railway stations) (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1434).

3 Eg provisions relating to prosecutions, appeals, interpretation, cumulative powers, inquiries, legal proceedings, ascertainment of compensation, provisional orders and amendment or adaptation of local Acts. However, these machinery powers relate only to the limited number of provisions of the Public Health Acts 1875 to 1925 still subsisting (see note 2). As to powers of local authorities generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 460 et seq.

4 See the Public Health Act 1936 s 346, Sch 3 (repealed). The Acts to be construed with the Public Health Act 1875 include, inter alia, the other Acts cited in note 1.

5 The exceptions are: the Public Health Act 1875 s 160 (in so far as it relates to naming of streets), s 171(4) (hackney carriages), the Public Health Acts Amendment Act 1907 s 21 (naming of streets), s 82 (seashore byelaws), s 83 (promenade byelaws), and the Public Health Act 1925 ss 17-19 (naming of streets), s 76 (vehicles at railway stations): see the Local Government Act 1972 s 180(2), Sch 14 para 24 (Sch 14 paras 24-26 amended by the Local Government (Miscellaneous Provisions) Act 1982 s 47, Sch 7 Pt I; the Statute Law (Repeals) Act 2004; and SI 2008/2840). These excepted provisions are subject to procedures for application or cessation of application by local authorities: see the Local Government Act 1972 Sch 14 para 25 (as so amended).

6 Local Government Act 1972 Sch 14 para 23. However, the following provisions do not extend to Greater London: the Public Health Act 1875 ss 160, 171; the Public Health Acts Amendment Act 1907 s 21, s 80, and so much of s 81 as relates to the Town Police Clauses Act 1847; and the Public Health Act 1925 ss 17-19, 75, 76: see the Local Government Act 1972 Sch 14 para 26 (as amended: see note 5).

7 See the Public Health Act 1936 s 346(1) proviso (c) (amended by the Local Government (Miscellaneous Provisions) Act 1982 Sch 6 para 5). Byelaws in force at the commencement of the Public Health Act 1936 were continued in force as if that Act had not been passed: s 346(1) proviso (a). Any document referring to an Act or to an enactment repealed by the Public Health Act 1936 must be construed as referring to the Public Health Act 1936 or to the corresponding provision of that Act: see s 346(3).

8 Public Health Act 1936 s 328. See *Re Blake and Croydon Royal Sanitary Authority* (1886) 2 TLR 336, where statutory powers as to the taxation of costs were held to be additional; *A-G v Tod-Heatley* [1897] 1 Ch 560, CA, where the common law duty to abate nuisance was held to be unaffected; *Sowerby Bridge UDC v Stott* [1956] 2 QB 596, [1956] 2 All ER 264, CA, where powers under a local Act were preserved.

9 See the Public Health Act 1875 s 341 (repealed with savings).

10 See the Public Health (Control of Disease) Act 1984 s 72. As from a day to be appointed, there is a minor amendment to s 72 by the Health and Social Care Act 2008 Sch 11 paras 1, 27. At the date at which this volume states the law no such day had been appointed.

11 Control of Pollution Act 1974 s 105(2)(c). See also note 12.

12 Control of Pollution Act 1974 s 105(2)(b). The provisions of s 105(2)(b), (c) are subject to the provisions of the Interpretation Act 1978 ss 18, 22, Sch 2 para 1, which relate to offences under two or more laws: see the Control of Pollution Act 1974 s 105(2).

13 See the Local Government (Miscellaneous Provisions) Act 1976 s 44(4)(b), (c).

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3. Other legislation relating to environmental and public health matters.

In addition to the principal national legislation¹, there are many other provisions relating to environmental quality, environmental protection and public health matters. These include provisions relating to: the national health service²; medicinal products and medical practice³; poisons⁴; establishments registered under the Care Standards Act 2000⁵; medical and dental services for school children⁶; the provision of milk and meals in schools⁷; the cleanliness of pupils⁸; the composition and labelling of food, its fitness for human consumption, and food hygiene generally⁹; slaughterhouses¹⁰; animal health¹¹; agriculture¹²; water quality and water pollution¹³; planning requirements¹⁴; landfill tax¹⁵; building regulation¹⁶; the provision of smoke detectors¹⁷ and fire escapes¹⁸; fire prevention¹⁹; safety at sports grounds²⁰; management of parks and pleasure grounds²¹; nature reserves and nature conservation²²; controls on dogs²³; safety regulation in connection with radiation and radioactive substances²⁴; the handling and storage of petroleum²⁵; the storage of celluloid and cinematograph film²⁶; the cleanliness of premises, persons and equipment where hairdressing²⁷, acupuncture, tattooing, body-piercing and electrolysis²⁸ are carried on; and the provision of environmental safety information²⁹. There is also legislation relating to the health and safety of workers in factories, shops, offices and railway premises³⁰; in mines and quarries³¹; and in agriculture³². Finally general mention should be made of the Marine and Coastal Access Act 2009 which is considered elsewhere in this work³³ and makes provision about or in connection a number of matters including marine functions and activities, migratory and freshwater fish, the establishment of coastal walking routes and of rights of access to land near the coast, and works which are detrimental to navigation³⁴.

¹ See PARA 1.

² See eg the National Health Service Act 2006; and **HEALTH SERVICES**.

³ See **MEDICINAL PRODUCTS AND DRUGS**.

⁴ See the Poisons Act 1972; and **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 284 et seq.

⁵ See the Care Standards Act 2000 Pt II (ss 11-42); and **SOCIAL SERVICES AND COMMUNITY CARE**.

⁶ See the National Health Service Act 2006 s 3; and **HEALTH SERVICES** vol 54 (2008) PARA 12.

⁷ See the Education Act 1996 s 512; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 542.

⁸ See the Education Act 1996 s 521; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 548.

⁹ See **FOOD** vol 18(2) (Reissue) PARAS 282 et seq, 359 et seq, 371 et seq.

¹⁰ See **FOOD** vol 18(2) (Reissue) PARA 470 et seq.

¹¹ See **ANIMALS** vol 2 (2008) PARA 1040 et seq.

¹² See **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1297 et seq.

¹³ As to water supply see **WATER AND WATERWAYS** vol 100 (2009) PARA 317 et seq; and as to water pollution see PARA 270 et seq. As to marine pollution see PARA 347 et seq.

¹⁴ See **TOWN AND COUNTRY PLANNING**.

- 15 See the Finance Act 1996 Pt III (ss 39-71); and **LANDFILL TAX**.
- 16 See the Building Act 1984; and **BUILDING**.
- 17 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and **BUILDING**.
- 18 See **BUILDING** vol 4(2) (2002 Reissue) PARA 394.
- 19 See the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and **FIRE SERVICES**.
- 20 See the Safety of Sports Grounds Act 1975; the Fire Safety and Safety of Places of Sport Act 1987; and **BUILDING** vol 4(2) (2002 Reissue) PARA 428 et seq. See also the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.
- 21 See the Public Health Act 1961 ss 52-54; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 555 et seq.
- 22 See eg the National Parks and Access to the Countryside Act 1949; the Wildlife and Countryside Act 1981; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 663 et seq.
- 23 See the Clean Neighbourhoods and Environment Act 2005 Pt 6 (ss 55-68); PARA 720; and **ANIMALS** vol 2 (2008) PARAS 907-908. See also PARA 1 note 29.
- 24 See eg the Radioactive Substances Act 1993; the Health Protection Agency Act 2004; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1357 et seq. See also generally **HEALTH AND SAFETY AT WORK**.
- 25 See eg the Health and Safety at Work etc Act 1974; the Petroleum Act 1987; the Petroleum Act 1998; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARAS 1474 et seq, 1626 et seq. See also generally **HEALTH AND SAFETY AT WORK**.
- 26 See the Celluloid and Cinematograph Film Act 1922; and **BUILDING** vol 4(2) (2002 Reissue) PARA 451 et seq.
- 27 See the Public Health Act 1961 s 77; and PARA 979.
- 28 See the Local Government (Miscellaneous Provisions) Act 1982 ss 13-17; and PARA 973 et seq.
- 29 See the Environment and Safety Information Act 1988; and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARAS 377-378.
- 30 See the Factories Act 1961; the Offices, Shops and Railway Premises Act 1963; the Health and Safety at Work etc Act 1974; and **HEALTH AND SAFETY AT WORK**.
- 31 See the Mines and Quarries Act 1954; and **MINES, MINERALS AND QUARRIES**. See also **HEALTH AND SAFETY AT WORK**.
- 32 See the Health and Safety at Work etc Act 1974; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1246 et seq.
- 33 See **OPEN SPACES AND COUNTRYSIDE; WATER AND WATERWAYS**.
- 34 As to the marine management organisation see the Marine and Coastal Access Act 2009 Pt 1 (ss 1-40). As to the exclusive economic zone, the UK marine area and the Welsh zone see Pt 2 (ss 41-43). As to marine planning see Pt 3 (ss 44-64). As to marine licensing see Pt 4 (ss 65-115). As to nature conservation see Pt 5 (ss 116-148). As to management of inshore fisheries see Pt 6 (ss 149-193). As to fisheries see Pt 7 (ss 194-234). As to enforcement see Pt 8 (ss 235-295). As to coastal access see Pt 9 (ss 296-310). As to miscellaneous matters see Pt 10 (ss 311-315). As to supplementary provisions see Pt 11 (ss 316-325).

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(2) EUROPEAN UNION LEGISLATION

(i) In general

4. Introduction.

A large amount of domestic environmental law is designed to ensure that the United Kingdom fulfils its international obligations, either directly¹ or perhaps more frequently where the European Union becomes the party to an international instrument by means of EU environmental legislation². While further detail is beyond the scope of this work it should also be noted that treaties (in the form of agreements or conventions perhaps led by the Climate Change Convention, the Kyoto Protocol and the European Convention on Human Rights)³ form the principal ultimate source of international environmental law ahead of such other, non-binding, sources as conference declarations⁴, statements of principle⁵, guidance⁶ and recommended standards⁷. Various international bodies also have a role in the promotion of and compliance with international environmental law⁸, although for present purposes the most relevant body is the EU.

The objectives of EU environmental legislation are generally to preserve, protect and improve the quality of the environment, to protect human health, to ensure a prudent and rational utilisation of natural resources and to promote measures at international level to deal with regional or worldwide environmental problems⁹. The principles on which EU action should be based are the precautionary principle and that preventative action should be taken, that environmental damage should be rectified at source and that the polluter should pay¹⁰.

Set out below¹¹ is a broad survey of EU measures affecting environmental matters, with cross-references to where further legislation¹² is considered. Generally the order of the material surveyed corresponds to the order of topics covered later in this title.

1 Eg with various obligations in the context of marine pollution the Merchant Shipping Act 1995 (see PARA 360 et seq) and the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (see PARA 365 et seq) were designed to implement the MARPOL Convention (as to which see PARA 404 note 18).

2 Eg in the case of measures to implement the Aarhus Convention on Access to Environmental Information: see PARA 55.

3 Ie the United Nations Framework Convention on Climate Change (UNFCCC) (Rio de Janeiro, 5 June 1992; Misc 5 (1993); Cm 2137) and the Kyoto Protocol to the UNFCCC (Kyoto, 11 December 1997; TS 006 (2005) Cm 6485); and see PARA 259 et seq. See also the Convention of Biological Diversity, the United Nations Convention of the Law of the Sea, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol to the Vienna Convention, the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the 'Basel Convention').

The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (the 'European Convention on Human Rights') and the Human Rights Act 1998 are generally discussed elsewhere: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 122 et seq. Although environmental issues were unlikely to have been in the minds of the framers of the Convention, this does not mean that they do not potentially engage certain Convention rights. The most commonly engaged rights are the right to life under the Convention art 2 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 123), the right to private and family life under art 8 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149) and the right to protection of property under Protocol 1 art 1 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 165). Article 14 on non-discrimination (see **CONSTITUTIONAL LAW**

AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 164) has been successfully invoked in combination with Protocol 1 art 1 in the case of *Pine Valley Developments Ltd v Ireland* A 222 (1991), 14 EHRR 319, ECtHR but unsuccessfully in the case of *Fredin v Sweden* A 192 (1991), 13 EHRR 784, ECtHR: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 164. The Convention art 3 which prohibits inhuman or degrading treatment (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 124) has possible potential in the case of very serious pollution risks and also art 9 (dealing with freedom of thought, conscience or religion) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 156) in cases involving environmental impacts on religious buildings or sites. Possible contexts in which substantive Convention rights may arise include the following main areas: (1) determination of environmental permits (formerly licences); (2) enforcement action; and (3) area or site designation. The key procedural right protected by the Convention in the context of environmental law is contained in art 6(1) (relating to the entitlement to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 134 et seq.

4 Eg the Declaration on the Human Environment (the 'Stockholm Declaration'), the Declaration on Environment and Development (the 'Rio Declaration'), North Sea Conference Declarations, Bremen 1 November 1984, London 24, 25 November 1987, The Hague 8 March 1990, Esberg 8, 9 June 1995, Bergen 22 March 2002.

5 Eg the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests (13 June 1992, (1992) 31 ILM 881).

6 Eg the 1987 Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes ((1987) UNEP/GC 14/17) Annex II; UNEP GC/dec/14/30.

7 Eg IAEA International Basic Safety Standards for Protection against Ionising Radiation and for the Safety of Radiation Sources (1996).

8 Eg the United Nations Environment Programme ('UNEP'), the United Nations General Assembly ('UNGA'), the Commission for Sustainable Development ('CSD'), autonomous institutional arrangements ('AIAs') established under particular treaty regimes, sectoral organisations such as the International Maritime ('IMO') and Civil Aviation Organisations ('ICAO') and key economic organisations such as the World Trade Organisation (WTO) and the World Bank. Also to be mentioned is the European Environment Agency which, although not a European Union institution does play an important role in the area of environmental competence in the European Union, including supplying information used in the implementation of European Union policy: see also European Parliament and EC Council Regulation 401/2009 (OJ L 126, 21.5.09, p 13) on the European Environment Agency and the European Environment and Observation Network (Codified version); and PARA 55.

9 See the Treaty on the Functioning of the European Union (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 191(1). The Treaty was formerly known as the Treaty Establishing the European Community (often abbreviated to 'EC Treaty' and also known as the Treaty of Rome); it has been renamed and its provisions renumbered by the Treaty of Lisbon Amending the Treaty Establishing the European Union and the Treaty Establishing the European Community (Lisbon, 13 December 2007, ECS 13 (2007); Cm 7294) (often referred to as the 'Lisbon Treaty') which came into force on 1 December 2009. The Treaty on the Functioning of the European Union is also sometimes referred to as the 'EU Treaty'.

10 See the Treaty on the Functioning of the European Union (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 191(2). See note 9; and as to 'the polluter pays' see also PARA 5. The precautionary principle is, however, only one of the principles upon which domestic policy will be formulated and does not oblige the Secretary of State to apply the precautionary principle to the consideration of his duties: see *R v Secretary of State for Trade and Industry, ex p Duddridge* [1995] 3 CMLR 231, [1995] Env LR 151 (leave to appeal refused [1996] 2 CMLR 361, CA).

The guiding principles, such as prevention of environmental damage and the polluter pays principle, emerged from early 'Action Programmes on the Environment' in 1973, 1977 and 1982, the Treaty of Rome (see note 9) actually originally being silent on environmental protection, with an environmental title (ie EC Treaty Title XIX (arts 174-176): see now Treaty on the Functioning of the European Union (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) Title XX (arts 191-193)) only being added with the Single European Act in 1986, until then legislative action on the environment being based on the market harmonisation provision (see now the Treaty on the Functioning of the European Union (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 115) and the general residual power (see now art 352). In this regard reference should be made to Case C-240/83: *Procureur de la République v Association de défense des brûleurs d'huiles usagées* [1985] ECR 531, ECJ (where it was said that environmental protection was 'one of the Community's essential objectives' before any such objective was expressly included in the Treaty of Rome). Early legislation largely dealt with pollution control in the various environmental media (water: see PARA 23 et seq; and air: see PARA 9 et seq), followed later by vehicle emissions (see PARA 14), waste management (see PARA 33 et seq), environmental impact assessment (see PARAS 7, 8), nature conservation (see PARA 54), integrated pollution prevention and control (see PARA 6) as well as legislation under the European Atomic Community (Euratom) Treaty in regard to radiation protection (see PARAS 18, 50 et seq). Later developments included the precautionary principle (see the text and above) which came with the

Maastricht Treaty (ie the Treaty on European Union), and with the Amsterdam Treaty the promotion of sustainable development and a high level of protection and improvement of the environment and the integration of environmental considerations into other EU policies became key aims: see the EC Treaty arts 2, 6 (see now the Treaty on European Union art 3, and the Treaty on the Functioning of the European Union art 11). As to the areas of activity see the EC Treaty art 3 (see now the Treaty on the Functioning of the European Union art 8); and as to the obligation of member states to ensure the obligations arising out of the Treaty or resulting from action taken by institutions see the EC Treaty arts 10, 249 (see now the Treaty on European Union art 4, and the Treaty on the Functioning of the European Union art 288). There were further action programmes in 1987, 1993 and 2001 which, amongst other things, developed strategies for climate change and sustainable development (see generally PARA 15 et seq). See also generally the Community Action Plan which was, at the date at which this volume states the law, to be found at www.europa.eu.

11 See PARA 6 et seq.

12 Ie especially including implementing national legislation.

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5. Environmental liability, use of criminal law.

The European Union Environmental Liability Directive¹ seeks to achieve the prevention and remedying of environmental damage, specifically, damage to habitats and species protected by European Union law, and to species or habitat on a site of special scientific interest for which the site has been notified, damage to water resources, and land contamination which presents a threat to human health. It reinforces the 'polluter pays' principle referred to above, making operators financially liable for threats of or actual damage². The Environmental Liability Directive does not cover all types of damage to the environment: it only covers 'environmental damage' which is one or more of: 'damage to protected species and natural habitats or in a site of special scientific interest', 'damage to water' and 'land damage'³. The Directive introduces two types of liability: fault-based liability in respect of environmental damage to protected species and natural habitats from all other occupational activities and strict liability in respect of environmental damage, caused by a specified range of 'occupational activities'⁴. Under the Directive operators are required to take immediate steps to prevent damage or further damage and to notify the enforcing authority; the enforcing authority must establish whether it is 'environmental damage' and identify a responsible operator⁵. In the United Kingdom there are already a number of legal systems which provide for the remediation of environmental damage and under which action is taken in the public interest by public authorities such as local authorities or the Environment Agency⁶. These authorities can require damage to be put right by those responsible for it, or put the damage right themselves and then recover the costs afterwards from those responsible. 2009 Regulations⁷ now supplement existing environmental protection legislation such as the Environmental Protection Act 1990⁸, the Water Resources Act 1991⁹ or the Wildlife and Countryside Act 1981¹⁰ and the Control of Major Accident Hazards Regulations 1999¹¹. Those pieces of legislation will still apply, and to the extent that they impose additional obligations to those in these Regulations, will still need to be complied with.

The pace of development in the EU law, whatever its ultimate source, has been rapid and continues to be so. An important development concerning waste and the environment is a Directive¹² seeking to impose criminal liability for environmental damage. The Directive requires member states to apply criminal sanctions to breaches of a large number of EU Directives and regulations¹³ (including as implemented by national law) where there is a requirement for member states in implementing the legislation to provide prohibitive measures¹⁴.

1 See European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56) on environmental liability with respect to the prevention and remedying of environmental damage (amended by European Parliament and EC Council Directive 2006/21 (OJ L102, 11.4.2005, p 15); and European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 114)). As to a preliminary ruling in regard to the interpretation of Directive 2004/35 see Case-378/08: *ERG Raffinerie Mediterranee SpA v Ministero dello Sviluppo economico* [2010] All ER (D) 135 (Mar), ECJ.

2 See European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56) art 1. As to a preliminary ruling in regard to the interpretation of the 'polluter pays' principle and Directive 2004/35 see Case-378/08: *ERG Raffinerie Mediterranee SpA v Ministero dello Sviluppo economico* [2010] All ER (D) 135 (Mar), ECJ.

3 See European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56) art 3. As to exceptions see art 4.

4 See European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56) art 3(1), Annex III.

5 As to preventive action see European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56) art 5; and as to remedial action see art 6. As to determination of remedial measures see art 7; as to prevention and mediation costs see art 8; as to cost allocation in cases of multiple party causation see art 9; as to the limitation period for recovery of costs see art 10; as to requests for action see art 12; as to review procedures see art 13; as to financial security see art 14; as to co-operation between member states see art 15; as to the relationship with national law see art 16; as to temporal application see art 17; as to reports and review see art 18; and to implementation see art 19 (the date for implementation is 30 April 2007). Note that the Directive does not apply to damage caused by acts occurring before the implementation date of 30 April 2007: see art 17.

6 As to the Environment Agency see PARA 68 et seq.

7 For the purposes of implementing European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56) in the United Kingdom the Environmental Damage (Prevention and Remediation) Regulations 2009, SI 2009/153, were made (and in regard to Wales the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009, SI 2009/995). As to the meaning of 'United Kingdom' see PARA 1 note 2. As to introductory measures see the Environmental Damage (Prevention and Remediation) Regulations 2009, SI 2009/153, Pt 1 (regs 1-12) (reg 6 amended by SI 2009/3275; and the Environmental Damage (Prevention and Remediation) Regulations 2009, SI 2009/153, reg 11 amended by SI 2010/587); as to preventing environmental damage see the Environmental Damage (Prevention and Remediation) Regulations 2009, SI 2009/153, Pt 2 (regs 13-16); as to remediation see Pt 3 (regs 17-23); and as to administration and enforcement see Pt 4 (regs 24-34). The Regulations apply to damage to protected species, natural habitats, sites of special scientific interest, water and land (see reg 4). They are enforced by the bodies specified in regs 10, 11 (reg 11 as so amended). The Regulations provide that, for certain economic activities, where there is an imminent risk of environmental damage, the operator must take steps to prevent it, and if it has occurred must prevent further damage; where damage has occurred the enforcing authority must assess the damage and identify remedial measures; and it must then serve a remediation notice on the responsible operator specifying what remediation is required: see Pt 3. Breach of specified provisions of the Regulations is an offence punishable (1) on summary conviction, with a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both; or (2) on conviction on indictment, with a fine or to imprisonment for a term not exceeding two years or both: see reg 34. As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

8 See PARAS 159 et seq, 620 et seq, 761 et seq.

9 See PARA 288 et seq.

10 See **OPEN SPACES AND COUNTRYSIDE**.

11 Ie the Control of Major Accident Hazards Regulations 1999, SI 1999/743: see PARAS 45, 788.

12 See European Parliament and EC Council Directive 2008/99 (OJ L328, 6.12.2008, p 28) on the protection of the environment through criminal law. Member states must pass national legislation for the purposes of implementing the Directive by 26 December 2010: see art 8. See also note 24.

13 Amongst the 72 relevant Directives and regulations are measures relating to waste, bathing water, wild birds, urban waste-water treatment, nitrates, packaging and packaging waste, major accidents hazards, water quality, landfill, waste electrical and electronic equipment, batteries and accumulators, integrated pollution prevention and control and waste shipments. See note 14.

14 European Parliament and EC Council Directive 2008/99 (OJ L328, 6.12.2008, p 28) is without prejudice to other systems of liability for environmental damage under EU or national law, eg civil liability and European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56).

Member states must ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence: (1) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants; (2) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants; (3) the shipment of waste, where this activity falls within the scope of European Parliament and EC Council Regulation 1013/2006 (OJ L190 12.7.2006, p 1) on shipments of waste art 2(25) (see PARA 44) and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked; (4) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or

substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants; (5) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants; (6) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species; (7) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species; (8) any conduct which causes the significant deterioration of a habitat within a protected site; (9) the production, importation, exportation, placing on the market or use of ozone-depleting substances: see European Parliament and EC Council Directive 2008/99 (OJ L328, 6.12.2008, p 28) art 3. Member states must ensure that inciting, aiding and abetting the intentional conduct referred to in art 3 is punishable as a criminal offence: see art 4. Member states must take the necessary measures to ensure that the offences referred to in arts 3, 4 (see above) are punishable by effective, proportionate and dissuasive criminal penalties: see art 5. Member states must ensure that legal persons can be held liable for offences referred to in art 3, 4 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on: (a) a power of representation of the legal person; (b) an authority to take decisions on behalf of the legal person; or (c) an authority to exercise control within the legal person: see art 6(1). Member states must also ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in art 6(1), has made possible the commission of an offence referred to in arts 3, 4 for the benefit of the legal person by a person under its authority: see art 6(2). Liability of legal persons under art 6(1), (2) must not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in arts 3, 4: see art 6(3). Member states must take the necessary measures to ensure that legal persons held liable pursuant to art 6 are punishable by effective, proportionate and dissuasive penalties: see art 7.

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(ii) Integrative Measures

6. Integrated pollution prevention and control.

European Union legislation introduces a regulatory system for integrated pollution prevention and control¹. The legislation seeks to control environmental impacts including emissions from specified installations by means of an integrated permitting system.

The general principles are that member states must ensure that all appropriate measures are taken to prevent pollution, in particular through application of the best available techniques, and that no significant pollution is caused². Further requirements are that waste production is avoided³, and that where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment⁴. Energy efficiency, noise, resource use, accident prevention and decommissioning of sites are also covered⁵.

The permitting system demands that for all installations covered⁶ a single permit is obtained by the operator; and, although there is no requirement for this to be granted by a single competent authority, procedures for the granting of such permits must be fully co-ordinated if more than one authority is involved⁷. Conditions may be attached to the permit⁸. Provision is made for access to information and public participation in the permit procedure⁹.

1 The European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version) (amended by European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 14)) which repeals and replaces EC Council Directive 96/61 (OJ L257, 10.10.96, p 26) concerning integrated pollution prevention and control ('IPPC'). The new Directive is without prejudice to EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) on the assessment of the effects of certain public and private projects on the environment (see PARAS 7, 18) and other relevant European Union provisions: see European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) art 1. References to the repealed Directive are to be construed as references to the new Directive (see art 22 and Annex VII). As to implementation in the United Kingdom see PARA 158 et seq, and see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARA 662 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2.

See generally Case C-39/01: *EC Commission v United Kingdom* [2002] ECR I-2513, [2002] All ER (D) 24 (Mar), ECJ (applicability to off-shore installations); Case C-78/04: *EC Commission v Austria* (18 November 2004), ECJ (definition of 'existing installation').

Words like 'integrative' and 'integrated' are generally used as a term of contrast to 'sectoral' legislation, concerned more specifically eg with the pollution of air, water and land. Such sectoral legislation is covered subsequently both in the survey of EU measures and in the consideration of national legislation later in the title.

2 See European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) art 3(a), (b).

3 In accordance with EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39): see PARA 33.

4 See European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) art 3(c).

5 See European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) art 3(d), (e), (f).

6 The categories of industrial activities covered are listed in European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) Annex I, which includes activities in the energy, metals, minerals, chemical and waste management industries, as well as limited agricultural activities.

- 7 See European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) art 7.
- 8 See European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) art 9.
- 9 See European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) art 15.

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7. Development consent and environmental impact assessment.

European Union legislation¹ requires member states to adopt all measures necessary to ensure that projects² likely to have significant effects³ on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent⁴ and an assessment with regard to their effects⁵. The environmental impact assessment must identify, describe and assess the direct and indirect effects of the project on the following factors: (1) human beings, fauna and flora; (2) soil, water, air, climate and landscape; (3) material assets and the cultural heritage; and (4) the interaction between factors mentioned in heads (1) to (3) above⁶. There are provisions requiring the giving of information and consultation⁷, although this does not affect national law relating to commercial and industrial confidentiality, including intellectual property, or the law safeguarding the public interest⁸. Member states may provide for a single procedure covering the requirements of both environmental impact assessment and integrated pollution prevention and control⁹.

These provisions do not apply to projects adopted by a specific piece of national legislation, since in such cases it is presumed that adequate information is provided through the legislative procedure¹⁰, nor do they apply to projects serving national defence purposes¹¹. In exceptional cases a project may be exempted subject to appropriate information being supplied to the European Commission¹².

Development consent and environmental impact assessment are covered elsewhere in this work¹³.

1. I.e. EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) on the assessment of the effects of certain public and private projects on the environment (amended by EC Council Directive 97/11 (OJ L73, 14.3.97, p 5); EC Council Directive 2003/35 (OJ L156, 25.6.2003, p 17); and European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 14)). For the purposes of implementation in the United Kingdom eg the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, were made: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 487 et seq. See also the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999, SI 1999/1783 (amended by SI 2005/1399; SI 2006/618); the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228 (amended by SI 2006/3106); the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003, SI 2003/164 (amended by SI 2006/3124); the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England) Regulations 2007, SI 2007/1067; the Marine Works (Environmental Impact Assessment) Regulations 2007, SI 2007/1518 (amended by SI 2009/2258); the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007, SI 2007/2610; the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933; and **FORESTRY** vol 52 (2009) PARA 11 et seq; **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 69; **WATER AND WATERWAYS** vol 100 (2009) PARAS 271, 272; **WATER AND WATERWAYS** vol 101 (2009) PARAS 649 et seq, 674. As to the meaning of 'United Kingdom' see PARA 1 note 2.

See generally *Berkeley v Secretary of State for the Environment, Transport and the Regions* [2001] EWCA Civ 1012, [2001] 3 CMLR 223, [2002] Env LR 14 (purposive interpretation of the Directive provisions); *R (on the application of Barker) v London Borough of Bromley* [2001] EWCA Civ 1766, [2002] Env LR 631 (significant environmental effects after grant of planning permission); *Bellway Urban Renewal Southern v Gillespie* [2003] EWCA Civ 400, [2003] 2 P & CR 236, [2003] Env LR 30 (significant effects and mitigating measures); *Alford v Department for Environment, Food and Rural Affairs* [2005] EWHC 808 (Admin), [2005] 3 EGLR 11, [2005] Env LR 43 (agricultural intensification). As to failure of the United Kingdom correctly to transpose into domestic law EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) arts 2(1), 4(2) see Case C-508/03: *EC Commission v United Kingdom* [2006] ECR I-3969, [2006] All ER (D) 62 (May), ECJ.

2 'Project' means (1) the execution of construction works or of other installations or schemes; (2) other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources: see EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 1.

It has been held that the date when the application for consent was formally lodged constitutes the sole criterion which may be used in determining whether a project falls within the scope of the EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40): Case C-431/92: *EC Commission v Germany* [1995] ECR I-2189, [1996] 1 CMLR 196, ECJ. See also Case C-396/92: *Bund Naturschutz in Bayern eV, Richard Stahnsdorf v Freistaat Bayern* [1994] ECR I-3717, ECJ; Case C-81/96: *Burgemeester en Welthouders van Haarlemmerliede en Spaarnwoude v Gedeputeerde Staten van Noord-Holland* [1998] ECR I-3923, ECJ. The amending Directive (ie EC Council Directive 97/11 (OJ L73, 14.3.97, p 5) amending EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) on the assessment of the effects of certain public and private projects on the environment) does not apply to projects for which development consent was being sought at the time when the amending Directive came into force. See also *R v North Yorkshire County Council, ex p Brown* [1997] Env LR 391.

3 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 2(1) (as amended: see note 1). See also *R (on the application of Malster) v Ipswich Borough Council and Ipswich Town Football Club* [2001] EWHC 711 (Admin), [2001] All ER (D) 107 (Aug), [2002] PCLR 251 (significant environmental effects).

4 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 2(1) (as amended: see note 1). See also *R v Hammersmith and Fulham London Borough Council, ex p Council for Protection of Rural England* [2000] 2 CMLR 1021, [2000] Env LR 549, CA (outline planning permission, the consent for the purposes of the Directive); *R v Rochdale Metropolitan Borough Council, ex p Milne* (2001) 81 P & CR 27, [2001] Env LR 22 (assessment of outline planning application); Case-205/8: *Umwaltanwalt von Kartnen v Kartner Landesregierung* [2010] All ER (D) 31 (Jan), ECJ (as to the interpretation of EEC Council Directive 85/337 arts 2(1), 4(1) in regard to a transboundary project involving power lines had to be subject to an environmental assessment procedure even where less than 15 km of it was situated in one of those member states).

5 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) arts 1, 2 (as amended: see note 1). There are two categories of project, the first being subject to mandatory assessment (see art 4(1), Annex I (as amended: see note 1)) and the second being subject to assessment where member states consider there are significant effects (see art 4(2), Annex II (as so amended)). See also Case C-133/94: *EC Commission v Belgium* [1996] ECR I-2323, ECJ; Case C-72/95: *Aannemersbedrijf PK Kraaijeveld BV v Gedeputeerde Staten van Zuid-Holland* [1997] All ER (EC) 134, [1996] ECR I-5403, ECJ. In determining whether a project listed in EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) Annex II should be made subject to an assessment, the relevant selection criteria set out in Annex III must be taken into account: see art 4 (as so amended).

See also *R v Swale Borough Council and Medway Ports, ex p Royal Society for the Protection of Birds* [1991] 1 PLR 6, [1991] JPL 39; Case C-396/92: *Bund Naturschutz in Bayern eV, Richard Stahnsdorf v Freistaat Bayern* [1994] ECR I-3717, ECJ; Case C-431/92: *EC Commission v Germany* [1995] ECR I-2189, [1996] 1 CMLR 196, ECJ; Case C-72/95: *Aannemersbedrijf PK Kraaijeveld BV v Gedeputeerde Staten van Zuid-Holland* above; Case C-392/96: *EC Commission v Ireland* [1999] ECR I-5901, [1999] 3 CMLR 727, ECJ (use of thresholds); *R v Rochdale Metropolitan Borough Council, ex p Tew* [1999] 3 PLR 74, [2000] Env LR 1 (no proper description of the development). See also Case C-201/02: *R (on the application of Wells) v Secretary of State for Transport, Local Government and the Regions* [2005] All ER (EC) 323, [2004] 1 CMLR 1027, ECJ (national court to determine whether consent for quarrying could be revoked or suspended in order to carry out an environmental impact assessment). See also *R (on the application of Catt) v Brighton and Hove City Council* [2006] EWHC 1337 (Admin), [2007] LGR 151, [2006] All ER (D) 150 (Jun) (application for judicial review dismissed as environmental impact assessment not required as previous screening opinion had concluded that the development would not have any significant effects on the environment). On the failure to implement Directive provisions see Case C-37/05: *EC Commission v United Kingdom* [2006] ECR I-6, [2006] All ER (D) 16 (Jan), ECJ; Case C-508/03: *EC Commission v United Kingdom* [2006] ECR I-3969, [2006] All ER (D) 62 (May), ECJ.

6 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 3 (as amended: see note 1).

7 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) arts 5-9 (as amended: see note 1).

8 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 10 (as amended: see note 1).

9 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 2 (as amended: see note 1). As to integrated pollution prevention and control see PARA 6. As to pollution control in the United Kingdom see PARA 158 et seq.

10 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 1(5). Since art 1(5) limits the field of application of the Directive, it must be interpreted restrictively: Case C-287/98: *Luxembourg v Linster* [2000] ECR I-6917, [2000] All ER (D) 1204, ECJ.

11 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 1(4).

12 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 2(3) (as amended: see note 1).

13 See note 1; and generally **TOWN AND COUNTRY PLANNING**.

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8. Strategic environmental assessment.

In addition to legislation on development consent and assessment¹, there is European Union legislation that in certain cases requires the carrying out of an environment assessment during the preparation of any plan or programme for development².

Strategic environmental assessment is covered elsewhere in this work³.

1 See PARA 7.

2 See European Parliament and EC Council Directive 2001/42 (OJ L197, 21.7.2001, p 30) on the assessment of the effects of specified plans and programmes on the environment; European Parliament and EC Council Recommendation 2001/331 (OJ L118, 27.4.2001, p 41) providing for minimum criteria for environmental inspections in the member states; and European Parliament and EC Council Decision 1411/2001 (OJ L191, 13.7.2001, p 1) on a Community framework for co-operation to promote sustainable urban development (amended by EC Council Decision 786/2004 (OJ L138, 30.4.2004, p 7)). For the purposes of implementing European Parliament and EC Council Directive 2001/42 (OJ L197, 21.7.2001, p 30) in England and Wales the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, and the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, were made: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60 et seq. See also the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991; TS 12 (1998) Cm 3879) (the 'Espoo Convention').

3 See note 1.

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(iii) Air Pollution and Air Quality

A. AIR QUALITY

9. Ambient air quality.

There is European Union legislation providing for ambient air quality and cleaner air¹. Amongst other things this creates a framework for the regulation of a range of substances², and provides for the setting of target values (or long term goals), limit values (or maximum acceptable concentrations) and alert thresholds (or concentrations above which there is a risk to human health from brief exposure and which require the population, and the European Commission, to be alerted of such danger)³. Factors to be taken into account when setting limit values and alert thresholds may include: (1) the degree of exposure of sectors of the population, and in particular sensitive sub-groups; (2) climatic conditions; (3) sensitivity of flora and fauna and their habitats; (4) historic heritage exposed to pollutants; (5) economic and technical feasibility; and (6) long-range transmission of pollutants⁴. Assessment and monitoring of air quality is required⁵, and member states must draw up and implement action plans to improve air quality in zones where limit values are not met, whilst ensuring that pollution is not shifted to other environmental media⁶. The provision of air quality information is also required⁷.

1 The European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1) on ambient air quality and cleaner air for Europe. This Directive replaces generally from June 2010 the following Directives: EC Council Directive 96/62 (OJ L296, 21.11.96, p 55) on ambient air quality assessment and management; EC Council Decision 97/101 (OJ L35, 5.2.97, p 14) establishing a reciprocal exchange of information and data from networks and individual stations measuring ambient air pollution within the member states; EC Council Directive 99/30 (OJ L163, 29.6.99, p 41) relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air; European Parliament and EC Council Directive 2000/69 (OJ L313, 13.12.2000, p 12) relating to limit values for benzene and carbon monoxide in ambient air; and European Parliament and EC Council Directive 2002/3 (OJ L67, 9.3.2002, p 14) relating to ozone in ambient air (see also PARA 10). As to national air quality strategy in the United Kingdom see the Environment Act 1995 Pt IV (ss 80-91); and PARA 192 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2. As to the proper implementation of EU requirements in national law see eg Case C-361/88: *EC Commission v Germany* [1991] ECR I-2567, [1993] 3 CMLR 821, ECJ; Case C-59/89: *EC Commission v Germany* [1991] ECR I-2607, [1993] 2 CMLR 821, ECJ; Case C-14/90: *EC Commission v France* [1991] ECR I-4331, ECJ; Case C-64/90: *EC Commission v France* [1991] ECR I-4335, ECJ. See also Case C-417/99: *EC Commission v Spain* [2001] ECR I-6015, ECJ. For the purposes of implementing EC Council Directive 96/62 (OJ L296, 21.11.96, p 55) (but see above) and EC Council Directive 99/30 (OJ L163, 29.6.99, p 41) (but see above and note 3) the Air Quality Standards Regulations 2007, SI 2007/64, and the Air Quality Standards (Wales) Regulations 2007, SI 2007/717, were made: see also PARA 190.

2 See EC Council Directive 96/62 (OJ L296, 21.11.96, p 55) Annex I; and see also Annex III (but see European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1); and note 1).

3 See EC Council Directive 96/62 (OJ L296, 21.11.96, p 55) art 4 (but see European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1); and note 1). Limit values have been set for certain substances: see EC Council Directive 99/30 (OJ L163, 29.6.99, p 41) relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (but see European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1); and note 1). See Case C-320/03 *EC Commission v Austria* [2006] All ER (EC) 513, [2005] ECR I-7929, ECJ (the protection of air quality pursuant to EC Council Directive 99/30 might justify the existence of national measures capable of obstructing intra-Community trade, but only if such measures are proportionate).

As to the conclusion of the Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants (TS 005 (2006) Cm 6757) (dealing with the further reduction of sulphur dioxide emissions) see EC Council Decision 2004/259 (OJ L81, 19.3.2004, p 35).

As to limit values for benzene and carbon monoxide in ambient air see European Parliament and EC Council Directive 2000/69 (OJ L313, 13.12.2000, p 12) (but see European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1); and note 1), for the purposes of the implementation of which the Air Quality Standards Regulations 2007, SI 2007/64; and the Air Quality Standards (Wales) Regulations 2007, SI 2007/717, were made. As to ozone see European Parliament and EC Council Directive 2002/3 (OJ L67, 9.3.2002, p 14) (but see European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1); and note 1), for the purposes of the implementation of which the Air Quality Standards Regulations 2007, SI 2007/64, and the Air Quality Standards (Wales) Regulations 2007, SI 2007/717, were made. As to arrangements for the submission of information on plans or programmes required under EC Council Directive 96/62 (OJ L296, 21.11.96, p 55) in relation to limit values for certain pollutants in ambient air see EC Commission Decision 2004/224 (OJ L68, 6.3.2004, p 27).

4 See EC Council Directive 96/62 (OJ L296, 21.11.96, p 55) Annex II (but see European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1); and note 1).

5 See EC Council Directive 96/62 (OJ L296, 21.11.96, p 55) arts 5, 6 (but see European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1); and note 1).

6 See EC Council Directive 96/62 (OJ L296, 21.11.96, p 55) arts 7-10 (but see European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1); and note 1).

7 See EC Council Directive 96/62 (OJ L296, 21.11.96, p 55) art 11 (but see European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1); and note 1). See also EC Council Decision 97/101 (OJ L35, 5.2.97, p 14) establishing a reciprocal exchange of information and data from networks and individual stations measuring ambient air pollution within the member states.

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B. FORMS OF AIR POLLUTION

10. Ozone.

Particular provision is made for monitoring ozone pollution at ground level, which arises from the interaction of vehicle emissions and sunlight to the detriment of human respiration¹. Member states are required to warn the population when certain thresholds are exceeded².

¹ See European Parliament and EC Council Directive 2002/3 (OJ L67, 9.3.2002, p 14) relating to ozone in ambient air; and as to guidance for the implementation of this Directive see EC Commission Directive 2004/279 (OJ L87, 25.3.2004, p 50). Directive 2002/3 is replaced as from 11 June 2010 by European Parliament and EC Council Directive 2008/50 (OJ L152, 11.6.2008, p 1) on ambient air quality and cleaner air for Europe (see also PARA 9 note 1). As to substances that deplete the ozone layer see European Parliament and EC Council Regulation 2037/2000 (OJ L244, 29.9.2000, p 1) (amended by European Parliament and EC Council Regulation 2038/2000 (OJ L244, 29.9.2000, p 25); European Parliament and EC Council Regulation 1804/2003 (OJ L265, 16.10.2003, p 1); European Parliament and EC Council Regulation 2077/2004 (OJ L359, 4.12.2004, p 28); European Parliament and EC Council Regulation 1084/2003 (OJ L265 16.10.2003 p 1); European Parliament and EC Council Regulation 2077/2004 (OJ L359 4.12.2004 p 28); European Parliament and EC Council Regulation 29/2006 (OJ L6 11.1.2006 p 27); European Parliament and EC Council Regulation 1366/2006 (OJ L264 25.9.2006 p 12); European Parliament and EC Council Regulation 1784/2006 (OJ L337 5.12.2006 p 3); European Parliament and EC Council Regulation 1791/2006 (OJ L363 20.12.2006 p 1) European Parliament and EC Council Regulation 2007/899 (OJ L196, 28.7.2007, p 24)); and European Parliament and EC Council Regulation 2039/2000 (OJ L244, 29.9.2000, p 26). For the purposes of implementation in the United Kingdom the Air Quality Standards Regulations 2007, SI 2007/64, and the Air Quality Standards (Wales) Regulations 2007, SI 2007/717, were made. As to the implementation of Regulation 2037/2000 see also the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002, SI 2002/528 (amended by SI 2008/91); and the Ozone-Depleting Substances (Qualifications) Regulations 2009, SI 2009/216. See also PARA 190. As to the meaning of 'United Kingdom' see PARA 1 note 2.

For an important case on the ozone regulations generally and the precautionary principle see Case C-341/95: *Bettati v Safety Hi-Tech Srl* [1998] ECR I-4355, ECJ.

² See European Parliament and EC Council Directive 2002/3 (OJ L67, 9.3.2002, p 14) art 6. See note 1.

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11. Industrial installations.

There is European Union legislation which aims to combat air pollution from industrial plants¹. Member states are required to ensure that there is prior authorisation for plants used in the energy industry, the production and processing of metals, the manufacture of non-metallic mineral products, the chemical industry, the waste disposal industry and the manufacture of paper-pulp². If necessary, emission limit values may be fixed based on the best available technology not entailing excessive costs³. These provisions are to be replaced by those contained in the integrated pollution and prevention control legislation⁴.

1 See EEC Council Directive 84/360 (OJ L188, 16.7.94, p 20) on the combating of air pollution from industrial plants (amended by EEC Council Directive 91/692 (OJ L377, 31.12.91, p 48)), which is the main framework Directive and has generated various Directives which set emission limit values: see eg EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) on the prevention and reduction of environmental pollution by asbestos (amended by EEC Council Directive 91/692 (OJ L377, 31.12.91, p 48)); and European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2000, p 91) on the incineration of waste. As to large combustion plants see further PARA 13. As to asbestos see further PARA 47. As to waste incineration see PARAS 40-41. See also European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8); and note 4.

See also European Parliament and EC Council Directive 2001/80 (OJ L309, 27.11.2001, p 1) on the limitation of emissions of certain pollutants into the air from large combustion plants (for the purposes of implementation in the United Kingdom the Large Combustion Plants (England and Wales) Regulations 2002, SI 2002/2688 (revoked) (see now the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARA 662 et seq) were made); and European Parliament and EC Council Directive 2001/81 (OJ L309, 27.11.2001, p 22) on national emission ceilings for certain atmospheric pollutants (for the purposes of implementation in the United Kingdom the National Emission Ceilings Regulations 2002, SI 2002/3118, have been made). As to the meaning of 'United Kingdom' see PARA 1 note 2. See also the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2007, SI 2007/2247, Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2008, SI 2008/2549, Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2009, SI 2009/1517 (these three revoked: see now the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2010, SI 2010/75; and PARA 187); and the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007, SI 2007/2325 (see PARA 186).

See Case C-364/03: *EC Commission v Greece* [2005] ECR I-6159, [2006] Env LR 9, ECJ.

2 See EEC Council Directive 84/360 (OJ L188, 16.7.94, p 20) art 3, Annex I. See also European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8); and note 4.

3 See EEC Council Directive 84/360 (OJ L188, 16.7.94, p 20) art 8. See also European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8); and note 4.

4 Ie European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version) replacing EC Council Directive 96/61 (OJ L257, 10.10.96, p 26) concerning integrated pollution prevention and control: see PARA 6.

UPDATE

11 Industrial installations

NOTE 1--SI 2007/2247, SI 2008/2549, SI 2009/1517 replaced: Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2010, SI 2010/75.

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12. Volatile organic compounds.

Measures and procedures are provided for preventing or reducing the direct and indirect effects of emissions of volatile organic compounds into the environment and the potential risks to human health¹. There is provision for national plans², emission limit values and a reduction scheme³. The exchange of information on the use of organic substances and their potential substitutes is required⁴. There are also provisions relating to monitoring and compliance⁵.

1 See EC Council Directive 99/13 (OJ L85, 29.3.99, p 1) on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (amended by European Parliament and EC Council Directive 2004/42 (OJ L143, 30.4.2004, p 87)). The provisions apply to the activities listed in EC Council Directive 99/13 (OJ L85, 29.3.99, p 1) Annex I, when operated above the thresholds set out in Annex IIA. See also EC Commission Decision 2002/529 (OJ L172, 2.17.2002, p 57) concerning a questionnaire for member states' reports on the implementation of EC Council Directive 99/13.

See the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2010, SI 2010/75; the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARAS 187, 662 et seq. See also Case C-332/02: *EC Commission v United Kingdom* [2003] ECR I-14431, [2004] All ER (D) 07 (Jan), ECJ.

2 See EC Council Directive 99/13 (OJ L85, 29.3.99, p 1) art 6.

3 See EC Council Directive 99/13 (OJ L85, 29.3.99, p 1) art 5, Annexes IIA, IIB.

4 See EC Council Directive 99/13 (OJ L85, 29.3.99, p 1) art 7. As to the giving of information see also arts 11, 12.

5 See EC Council Directive 99/13 (OJ L85, 29.3.99, p 1) arts 8, 9, 10.

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13. Power generation.

There is European Union legislation limiting emissions of nitrogen oxides, sulphur dioxide and dust from large combustion-driven power plants¹. Under this legislation, there is to be progressive reduction of total annual emissions from existing plants² and new plants must comply with emission limit values³.

1 See European Parliament and EC Council Directive 2001/80 (OJ L309, 27.11.2001, p 1) on the limitation of emissions of certain pollutants into the air from large combustion plants. For the purposes of implementation of the predecessor Directive in the United Kingdom the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed), and the Pollution Prevention and Control Act 1999 were passed: see PARA 158 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2.

See Case C-364/03: *EC Commission v Greece* [2005] ECR I-6159, [2006] Env LR 9, ECJ.

2 See European Parliament and EC Council Directive 2001/80 (OJ L309, 27.11.2001, p 1) art 3.

3 See European Parliament and EC Council Directive 2001/80 (OJ L309, 27.11.2001, p 1) art 4.

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14. Vehicles.

European Union legislation requires measures to be taken against air pollution by gases from the engines of motor vehicles¹. There are provisions for type approval and test specifications, and member states may not refuse to grant approval or prohibit the sale or entry into service of any vehicle on grounds relating to emissions if it complies with these provisions².

There are also specific provisions controlling the emission of gases from vehicles propelled by diesel engines³.

1 See EEC Council Directive 70/220 (OJ L76, 6.4.70, p 1) on the approximation of the laws of the member states relating to measures to be taken against air pollution by gases from positive-ignition engines of motor vehicles (amended by EEC Commission Directive 78/665 (OJ L223, 14.8.78, p 48); EEC Council Directive 83/351 (OJ L197, 20.7.83, p 1); EEC Council Directive 88/76 (OJ L36, 9.2.88, p 1); EEC Council Directive 88/436 (OJ L214, 6.8.88, p 1); EEC Commission Directive 89/491 (OJ L238, 15.8.89, p 43); EEC Council Directive 91/441 (OJ L242, 30.8.91, p 1); EC Council Directive 93/59 (OJ L186, 28.7.93, p 21); EC Council Directive 94/12 (OJ L100, 19.4.94, p 42); EC Council Directive 96/44 (OJ L210, 20.8.96, p 25); EC Council Directive 96/69 (OJ L282, 1.11.96, p 64); European Parliament and EC Council Directive 98/69 (OJ L350, 28.12.98, p 1); EC Commission Directive 98/77 (OJ L286, 23.10.98, p 34); EC Commission Directive 99/102 (OJ L334, 28.12.99, p 43); European Parliament and EC Council Directive 2001/1 (OJ L35, 6.2.2001, p 34); European Parliament and EC Council Directive 2001/100 (OJ L16, 18.1.2002); EC Commission Directive 2002/80 (OJ L291, 28.10.2002, p 20); and EC Commission Directive 2003/76 (OJ L206, 15.8.2003, p 29)). Directive 70/220 (and all listed amending Directives) is repealed and replaced with effect from 2 January 2013 by EC Council Regulation 715/2007 (OJ L171, 29.6.2007, p 1) on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information. The Regulation establishes common technical requirements for type approval of motor vehicles, and replacement parts with regard to their emissions. It also lays down rules for in-service conformity, durability of pollution control devices, on-board diagnostic systems, measurement of fuel consumption and accessibility of vehicle repair and maintenance information. Whilst the Regulation lays down fundamental provisions on vehicle emissions, the technical specifications are to be laid down by individual implementing measures.

As to the availability of consumer information on fuel economy and CO² emissions in respect of the marketing of passenger cars see European Parliament and EC Council Directive 1999/94 (OJ L12, 18.1.2000, p 16). As to the establishment of a scheme to monitor the average specific emissions of CO² from new passenger cars see European Parliament and EC Council Decision 1753/2000 (OJ L202, 10.8.2000, p 1).

For the purposes of implementation in the United Kingdom the Motor Vehicles (Type Approval) Regulations 1980, SI 1980/1182, the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, the Motor Fuels (Composition and Content) Regulations 1999, SI 1999/3107, and the Road Vehicles (Approval) Regulations 2009, SI 2009/717 were made: see **ROAD TRAFFIC**. As to the meaning of 'United Kingdom' see PARA 1 note 2. See also the Motor Vehicles (Replacement of Catalytic Converters and Pollution Control Devices) Regulations 2009, SI 2009/1899; and **ROAD TRAFFIC**.

2 See EEC Council Directive 70/220 (OJ L76, 6.4.70, p 1) art 2. See EC Council Regulation 715/2007 (OJ L171, 29.6.2007, p 1); and note 1.

3 See eg EEC Council Directive 88/77 (OJ L36, 9.2.88, p 33) on the approximation of the laws of the member states relating to the measures to be taken against the emission of gaseous pollutants from diesel engines for use in vehicles (amended by EEC Council Directive 91/542 (OJ L295, 25.10.91, p 1); European Parliament and EC Council Directive 96/1 (OJ L40, 17.2.96, p 1); European Parliament and EC Council Directive 99/96 (OJ L44, 16.2.2000, p 1); and EC Commission Directive 2001/27 (OJ L107, 18.4.2001, p 10)); and see European Parliament and EC Council Directive 2005/55 (OJ L275, 20.10.2005, p 1) on the approximation of the laws of the member states relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles (implemented by EC Commission Directive 2005/78 (OJ L313, 29.2005, p 1). See also EEC Council Directive 72/306 (OJ L190, 20.8.72, p 1) on the approximation of the laws of the member states relating to the measures to be taken against the

emission of pollutants from diesel engines for use in vehicles (amended by EEC Commission Directive 89/491 (OJ L238, 15.8.89, p 43); EC Commission Directive 97/20 (OJ L125, 16.5.97, p 21); and EC Commission Directive 2003/21 (OJ L61, 8.3.2005, p 25)). Directive 2005/55 is amended (with effect from 3 January 2009) to cover all heavy duty vehicles: see EC Council Regulation 715/2007 (OJ L171, 29.6.2007, p 1) art 16.2. Directive 72/306 is repealed and replaced with effect from 2 January 2013 by EC Council Regulation 715/2007 (OJ L171, 29.6.2007, p 1): see note 1.

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(iv) Climate Change and Energy Conservation

15. Greenhouse gas emissions and climate change.

European Union legislation¹ establishes a mechanism for monitoring anthropogenic greenhouse gas emissions². Member states are required to devise, publish and implement national programmes for limiting or reducing such emissions³ and must keep an inventory and report data to the European Commission⁴. The national programmes are subject to evaluation⁵. EU legislation⁶ also establishes a scheme for greenhouse gas emission allowance trading within the Community⁷.

1 Ie EEC Council Decision 93/389 (OJ L167, 9.7.93, p 31) for a monitoring mechanism of Community CO² and other greenhouse gas emissions (amended by EC Council Decision 99/296 (OJ L117, 5.5.99, p 35)), which gives effect to obligations of the European Union under the United Nations Framework Convention on Climate Change (Rio de Janeiro, 5 June 1992; Misc 5 (1993); Cm 2137) and the Kyoto Protocol (Kyoto, 11 December 1997; TS 006 (2005) Cm 6485) (see PARA 5). See also EC Council Decision 2002/358 (OJ L130, 15.5.2002, p 1) concerning the approval on behalf of the European Community of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder.

2 See EEC Council Decision 93/389 (OJ L167, 9.7.93, p 31) art 1 (as amended: see note 1). As to the procedure for the approval and adoption of measures see art 8.

3 See EEC Council Decision 93/389 (OJ L167, 9.7.93, p 31) art 2 (as amended: see note 1).

4 See EEC Council Decision 93/389 (OJ L167, 9.7.93, p 31) art 3 (as amended: see note 1).

5 See EEC Council Decision 93/389 (OJ L167, 9.7.93, p 31) arts 4, 5, 6 (as amended: see note 1).

6 Ie European Parliament and EC Council Directive 2003/87 (OJ L275, 25.10.2003, p 32) establishing a scheme for greenhouse gas emission allowance trading within the European Community (amended by European Parliament and EC Council Directive 2004/101 (OJ L338, 13.11.2004, p 18); European Parliament and EC Council Directive 2008/101 (OJ L8, 13.1.2009, p 3); and European Parliament and EC Council Directive 2009/29 (OJ L140, 5.6.2009, p 63)). See also EC Commission Regulation 2216/2004 (OJ L386, 29.12.2004, p 1) for a standardised and secured system of registries pursuant to Directive 2003/87 and Decision 280/2004 (amended by EC Commission Regulation 916/2007 (OJ L200, 1.8.2007, p 5); and EC Commission Regulation 994/2008 (OJ L271, 11.10.2008, p 3); and EC Commission Decision 2004/156 (OJ L59, 26.2.2004, p 1) establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87. Note that Regulation 2216/2004 is replaced as from 1 January 2012 by EC Commission Regulation 994/2008 (OJ L271, 11.10.2008, p 3) for a standardised system of registries pursuant to Directive 2003/87 and Decision 280/2004. Decision 2004/156 is replaced by EC Commission Decision 2007/589 (OJ L229, 31.8.2007, p 1) establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87. For the purposes of implementation in the United Kingdom of Directive 2003/87 the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, were made: see PARA 260 (see also PARA 186). As to the meaning of 'United Kingdom' see PARA 1 note 2. See also the Fluorinated Greenhouse Gases Regulations 2009, SI 2009/261, which were made for the purposes of implementing European Parliament and EC Council Regulation 842/2006 (OJ L161, 14.6.2006, p 1) on certain fluorinated greenhouse gases. See also PARA 260.

7 Charges may be imposed for carbon emission by the allocation of carbon reduction trading scheme allowances in return for payment: see the Finance Act 2008 s 21; and PARA 261. See also PARAS 186, 260. As to the Climate Change Act 2008 see PARA 259 et seq.

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16. Energy efficiency generally.

There is European Union legislation¹ aimed at enhancing the cost-effective improvement of energy end-use efficiency in the member states by (1) providing the necessary indicative targets as well as mechanisms, incentives and institutional, financial and legal frameworks to remove existing market barriers and imperfections that impede the efficient end use of energy; (2) creating the conditions for the development and promotion of a market for energy services and for the delivery of other energy efficiency improvement measures to final consumers². The relevant Directive covers such matters as saving targets³ and the promotion of energy end-use efficiency and energy services⁴.

There is also EU legislation⁵ which aims to enable the harmonisation of national measures on the publication, particularly by means of labelling and of product information, of information on the consumption of energy and other essential resources, and additional information concerning certain types of household appliances, thereby allowing consumers to choose more energy-efficient appliances⁶. The provisions apply to the following types of household appliances, even where these are sold for non-household uses: refrigerators, freezers and their combinations⁷; washing machines, driers and their combinations⁸; dishwashers⁹; ovens¹⁰; water heaters and hot-water storage appliances¹¹; lighting sources¹²; and air-conditioning appliances¹³. Procedures exist for the addition of further categories of appliance¹⁴.

1 The European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) on energy end-use efficiency and energy services and repealing EEC Council Directive 93/76 (OJ L237, 22.9.93, p 28) limiting carbon dioxide emissions by improving energy efficiency. See also PARA 19. For the purposes of implementation in the United Kingdom the Building Regulations 2000, SI 2000/2531, were made: see **BUILDING** vol 4(2) (2002 Reissue) PARA 309. See also European Parliament and EC Council Directive 2002/91 (OJ L1, 4.1.2003, p 65) on the energy performance of buildings. See the Sustainable and Secure Buildings Act 2004; and **BUILDING**. See also the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991 (amended by SI 2007/1669, SI 2007/3302, SI 2008/647; and SI 2009/1900); and **BUILDING**. As to the meaning of 'United Kingdom' see PARA 1 note 2.

As to the possible overlap between the area of energy efficiency and eco-labelling (see PARA 56) in the context of the 'energy star agreement' see Case C-281/01: *EC Commission v EU Council* [2002] ECR I-12049, [2003] 1 CMLR 517, [2002] All ER (D) 160 (Dec).

2 See European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 1.

3 See European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) arts 4, 5.

4 See European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) arts 6-13.

5 The EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances. The Directive is a framework Directive which requires implementing Directives to be adopted. See generally **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1147; **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARAS 393, 781 et seq.

6 See EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) art 1.

7 EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) art 1. The framework Directive is implemented with respect to refrigerators, freezers and their combinations by EEC Commission Directive 94/2 (OJ L45, 17.2.94, p 1) (amended by EC Commission Directive 2003/66 (OJ L170, 9.7.2002, p 10)) with regard to energy labelling of household electric refrigerators, freezers and their combinations.

8 EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) art 1. The framework Directive is implemented with respect to washing machines by EEC Commission Directive 95/12 (OJ L136, 21.6.95, p 1) (amended by EC Commission Directive 96/89 (OJ L338, 28.12.96) p 85)). The framework Directive is implemented with respect to tumble driers by EC Commission Directive 95/13 (OJ L136, 21.6.95, p 28). The framework Directive is implemented with respect to washer driers by EC Commission Directive 96/60 (OJ L266, 18.10.96, p 1).

9 EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) art 1. The framework Directive is implemented with respect to dishwashers by EC Commission Directive 97/17 (OJ L118, 7.5.97, p 1) (amended by EC Commission Directive 99/9 (OJ L56, 4.3.99, p 46)).

10 EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) art 1.

11 EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) art 1.

12 EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) art 1. The framework Directive is implemented with respect to household lamps by EC Commission Directive 98/11 (OJ L71, 10.3.98, p 1).

13 See EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) art 1.

14 See EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) art 1.

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17. Alternative energy sources.

A further measure which contributes to the reduction of greenhouse gas emissions is the promotion of renewable energy sources, such as energy from wind, wave, solar and renewable biomass sources which contribute little or no greenhouse gases to the atmosphere. The 'Altener' programme was established in 1993¹ and has now been replaced by 'Altener II', which is a multinational programme of measures and actions to promote the use of renewable energy sources².

There is also legislation on the promotion of electricity produced from renewable energy sources³.

1 See EEC Council Decision 93/500 (OJ L235, 18.9.93, p 1) concerning the promotion of renewable energy sources in the Community (Altener programme).

2 See EC Council Decision 98/352 (OJ L159, 3.6.98, p 53) concerning a multinational programme for the promotion of renewable energy sources in the Community (Altener II programme).

3 See European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) on the promotion of electricity produced from renewable energy sources in the internal electricity market. For the purposes of the partial implementation of this Directive in the United Kingdom the Renewables Obligation Order 2009, SI 2009/785, was made: see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1219 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2.

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(v) Environmental Energy Efficiency

18. Introduction.

The principal European Union Directives currently in force to control emissions into the atmosphere of waste products from generating stations burning fossil fuels are:

- 1 (1) the Air Framework Directive which requires measures to be taken to prevent or reduce air pollution from industrial plants within the Community including thermal (but not nuclear) generating stations having a nominal heat output of greater than 50 megawatts¹;
- 2 (2) the Large Combustion Plants Directive which applies to combustion plants, the rated thermal input of which is equal to or greater than 50 megawatts, irrespective of whether they use solid, liquid or gaseous fuels, and requires member states to achieve significant emission reductions by 1 January 2008 at the latest².

These provisions are, however, to be replaced by those contained in the Integrated Pollution and Prevention Control Directive³.

Related to pollution is EU legislation for the control of the production, use, treatment and disposal of waste substances which may have harmful environmental effects⁴. Particular provision is made with regard to the transfrontier shipment of radioactive waste⁵ and with regard to the disposal of waste electrical and electronic equipment⁶. There are also restrictions on the use of certain hazardous substances in electrical and electronic equipment⁷.

The Environmental Impact Directive introduced a system for prior assessment by the member states of the possible effects of public and private projects on the environment; such projects include thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear generating stations and no application to construct or extend such an installation may be approved unless certain environmental information, including an environmental statement describing the likely effects of the development on the environment, has been considered⁸.

Directives such as the Habitats Directive⁹ and the Wild Birds Directive¹⁰ and the regulations which implement them in domestic law ensure that consideration is given to the protection of the natural environment¹¹.

1 See EEC Council Directive 84/360 (OJ L188, 16.7.84, p 20) on the combating of air pollution from industrial plants, which is the main framework Directive and has generated various Directives which set emission limit values; and PARA 11.

2 See European Parliament and EC Council Directive 2001/80 (OJ L309, 27.11.2001, p 1) on the limitation of emissions of certain pollutants into the air from large combustion plants; and PARA 11.

3 See European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version) replacing EC Council Directive 96/61 (OJ L257, 10.10.96, p 26) concerning integrated pollution prevention and control: see PARA 6.

4 The relevant Directives are discussed in PARA 33 et seq.

5 See Euratom Council Directive 2006/117 (OJ L337 5.12.2006 p 21) on the supervision and control of shipments of radioactive waste and spent fuel, which repeals and replaces Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) on the supervision and control of shipments of radioactive waste between member states and into and out of the Community; see PARA 51; and see also **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1477. For the purpose of implementing Euratom Council Directive 2006/117 in the United Kingdom the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulation 2008, SI 2008/3087, were made. As to the European Atomic Energy Community ('Euratom') see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1337 et seq. See also Euratom Council Regulation 1493/93 (OJ L148, 19.6.93, p 1) on shipments of radioactive substances between member states.

6 See European Parliament and EC Council Directive 2002/96 (OJ L37, 13.2.2003, p 24) on waste electrical and electronic equipment (amended by European Parliament and EC Council Directive 2003/108 (OJ L345, 31.12.2003, p 106); European Parliament and EC Council Directive 2008/34 (OJ L81, 20.3.2008, p 65); and European Parliament and EC Council Directive 2008/112 (OJ L345, 23.12.2008, p 68)), for the purposes of the implementation of which the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, were made: see PARA 33.

7 See European Parliament and EC Council Directive 2002/95 (OJ L37, 13.3.2003, p 19) on the restriction of the use of certain hazardous substances in electrical and electronic equipment (amended by European Parliament and EC Council Directive 2008/35 (OJ L81, 20.3.2008, p 67), for the purposes of the implementation of which the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008, SI 2008/37 (amended by SI 2009/581) were made: see PARA 33.

8 See EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) on the assessment of the effects of certain public and private projects on the environment (amended by EC Council Directive 97/11 (OJ L73, 14.3.1997, p 5); European Parliament and EC Council Directive 2003/35 (OJ L156, 25.6.2003, p 17); and European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 14); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 10. This is now supplemented by the Strategic Environmental Assessment Directive (European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30) on the assessment of the effects of certain plans and programmes on the environment) which introduces a system of prior environmental assessment at the planning stage: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 10.

For the purposes of implementing the Environmental Impact Directive, the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, were made (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 488 et seq); and in relation to (1) proposed pipeline works by a gas transporter, the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, were made (see PARA 577); (2) certain electricity works, the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, were made (see PARA 579); (3) the decommissioning of nuclear reactors, the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, were made (see PARA 580); and (4) certain operations connected with petroleum production and submarine pipelines, the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, were made (see PARA 581).

9 Ie EEC Council Directive 92/43 (OJ L206, 22.07.92, p 7) on the conservation of natural habitats and wild fauna and flora (amended by EEC Council Directive 97/62 (OJ L305, 8.11.97, p 42)): see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728; **WATER AND WATERWAYS** vol 101 (2009) PARA 679. See also PARA 23.

10 Ie EEC Council Directive 79/409 (OJ L103, 25.04.79, p 1) on the conservation of wild birds (amended by EEC Council Directive 94/24 (OJ L164, 30.6.94, p 9); and European Parliament and EC Council Directive 2008/12 (OJ L323, 3.12.2008, p 31)): see **ANIMALS** vol 2 (2008) PARAS 994, 1006; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728.

11 See eg the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754 (see PARAS 582-584, 618); and the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842 (see PARA 619).

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19. Energy end-use efficiency and energy services.

The European Union Directive on energy end-use efficiency and energy services¹, which repeals an earlier energy efficiency Directive², has as its purpose the enhancement of the cost-effective improvement of energy end-use efficiency³ in the member states by:

- 3 (1) providing the necessary indicative targets as well as mechanisms, incentives and institutional, financial and legal frameworks to remove existing market barriers and imperfections that impede the efficient end use of energy;
- 4 (2) creating the conditions for the development and promotion of a market for energy services⁴ and for the delivery of other energy efficiency improvement measures to final consumers⁵.

The Directive requires member states to set energy savings targets⁶ and to promote energy end-use efficiency and energy services⁷. In particular, member states must ensure that, in so far as it is technically possible, financially reasonable and proportionate in relation to the potential energy savings, final customers for electricity, natural gas, district heating and/or cooling and domestic hot water are provided with competitively priced individual meters that accurately reflect the final customer's⁸ actual energy consumption and that provide information on actual time of use. When an existing meter is replaced, such competitively priced individual meters must always be provided, unless this is technically impossible or not cost-effective in relation to the estimated potential savings in the long term. When a new connection is made in a new building or a building undergoes major renovations⁹, such competitively priced individual meters must always be provided¹⁰. Member states must ensure that, where appropriate, billing performed by energy distributors¹¹, distribution system operators¹² and retail energy sales companies¹³ is based on actual energy consumption, and is presented in clear and understandable terms. Appropriate information must be made available with the bill to provide final customers with a comprehensive account of current energy costs; and billing on the basis of actual consumption must be performed frequently enough to enable customers to regulate their own energy consumption¹⁴. Member states must also ensure that, where appropriate, the following information is made available to final customers in clear and understandable terms by energy distributors, distribution system operators or retail energy sales companies in or with their bills, contracts, transactions, and/or receipts at distribution stations:

- 5 (a) current actual prices and actual consumption of energy;
- 6 (b) comparisons of the final customer's current energy consumption with consumption for the same period in the previous year, preferably in graphic form;
- 7 (c) wherever possible and useful, comparisons with an average normalised or benchmarked user of energy in the same user category;
- 8 (d) contact information for consumers' organisations, energy agencies or similar bodies, including website addresses, from which information may be obtained on available energy efficiency improvement measures, comparative end-user profiles and/or objective technical specifications for energy-using equipment¹⁵.

Member states must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive not later than 17 May 2008¹⁶.

- 1 le European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) on energy end-use efficiency and energy services.
- 2 le EEC Council Directive 93/76 (OJ L237, 22.9.93, p 28) to limit carbon dioxide emissions by improving energy efficiency.
- 3 For these purposes, 'energy efficiency' means a ratio between an output of performance, service, goods or energy, and an input of energy; 'energy efficiency improvement' means an increase in energy end-use efficiency as a result of technological, behavioural and/or economic changes; and 'energy' means all forms of commercially available energy, including electricity, natural gas (including liquefied natural gas), liquefied petroleum gas, any fuel for heating and cooling (including district heating and cooling), coal and lignite, peat, transport fuels (excluding aviation and maritime bunker fuels) and biomass as defined in European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) on the promotion of electricity produced from renewable energy sources in the internal electricity market (see PARA 20); European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 3(a)-(c).
- 4 'Energy service' means the physical benefit, utility or good derived from a combination of energy with energy efficient technology and/or with action, which may include the operations, maintenance and control necessary to deliver the service, which is delivered on the basis of a contract and in normal circumstances has proven to lead to verifiable and measurable or estimable energy efficiency improvement and/or primary energy savings (European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 3(e)); and 'energy savings' means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of one or more energy efficiency improvement measures, whilst ensuring normalisation for external conditions that affect energy consumption (art 3(d)). 'Energy efficiency improvement measures' means all actions that normally lead to verifiable and measurable or estimable energy efficiency improvement: art 3(h).
- 5 See European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 1.
- 6 See European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) arts 4-5.
- 7 See European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) arts 6-13.
- 8 'Final customer' means a natural or legal person that purchases energy for his own end use: European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 3(n).
- 9 le as set out in European Parliament and EC Council Directive 2002/91 (OJ L1, 4.1.2003, p 65) on the energy performance of buildings. As to that Directive see also PARA 16; and for the purposes of the implementation of which in the United Kingdom the Building Regulations 2000, SI 2000/2531, and the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, were made: see **BUILDING**.
- 10 European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 13(1).
- 11 For these purposes, 'energy distributor' means a natural or legal person responsible for transporting energy with a view to its delivery to final customers and to distribution stations that sell energy to final customers. This definition excludes electricity and natural gas distribution system operators, as to which see note 12: see European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 3(o).
- 12 For these purposes, 'distribution system operator' means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system of electricity or natural gas in a given area and, where applicable, its interconnections with other systems, and for ensuring the long term ability of the system to meet reasonable demands for the distribution of electricity or natural gas: European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 3(p).
- 13 For these purposes, 'retail energy sales company' means a natural or legal person that sells energy to final customers: European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 3(q).
- 14 European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 13(2).
- 15 European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 13(3).
- 16 See European Parliament and EC Council Directive 2006/32 (OJ L114, 27.4.2006, p 64) art 18(1).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/1. LEGISLATION/(2) EUROPEAN UNION LEGISLATION/(v) Environmental Energy Efficiency/20. Promotion of electricity produced from renewable sources.

20. Promotion of electricity produced from renewable sources.

There is European Union legislation¹ aimed at promoting an increase in the contribution of renewable energy sources to electricity production in the internal market for electricity² and creating a basis for a future Community framework in that regard³. Not later than 27 October 2002 and every five years thereafter, member states must adopt and publish a report setting national indicative targets for future consumption of electricity⁴ produced from renewable energy sources⁵ in terms of a percentage of electricity consumption for the next ten years⁶. They must take appropriate steps, in proportion to the objective to be attained, to encourage greater consumption of electricity produced from renewable energy sources in conformity with those national indicative targets⁷. Every two years they must publish a report which includes an analysis of success in meeting the national indicative targets taking account, in particular, of climatic factors likely to affect the achievement of those targets and which indicates to what extent the measures taken are consistent with the national climate change commitment⁸.

Member states must ensure that the origin of electricity produced from renewable energy sources can be guaranteed as such according to objective, transparent and non-discriminatory criteria laid down by each member state, and that a guarantee of origin is issued to this effect in response to a request⁹. They may designate one or more competent bodies, independent of generation and distribution activities, to supervise the issue of such guarantees of origin¹⁰. A guarantee of origin must:

- 9 (1) specify the energy source from which the electricity was produced, specifying the dates and places of production, and in the case of hydro-electric installations, indicate the capacity;
- 10 (2) serve to enable producers of electricity from renewable energy sources to demonstrate that the electricity they sell is produced from renewable energy sources¹¹.

Such guarantees of origin are to be mutually recognised by the member states, exclusively as proof of the elements referred to in heads (1) and (2) above. Any refusal to recognise a guarantee of origin as such proof, in particular for reasons relating to the prevention of fraud, must be based on objective, transparent and non-discriminatory criteria. In the event of refusal to recognise a guarantee of origin, the European Commission may compel the refusing party to recognise it, particularly with regard to objective, transparent and non-discriminatory criteria on which such recognition is based¹². Member states or the competent bodies must put in place appropriate mechanisms to ensure that guarantees of origin are both accurate and reliable¹³.

Without prejudice to the maintenance of the reliability and safety of the grid, member states must also take the necessary measures to ensure that transmission system operators and distribution system operators in their territory guarantee the transmission and distribution of electricity produced from renewable energy sources. They may also provide for priority access to the grid system of electricity produced from renewable energy sources. When dispatching generating installations, transmission system operators must give priority to generating installations using renewable energy sources in so far as the operation of the national electricity system permits¹⁴. Member states must put into place a legal framework or require transmission system operators and distribution system operators to set up and publish their

standard rules relating to the bearing of costs of technical adaptations, such as grid connections and grid reinforcements, which are necessary in order to integrate new producers feeding electricity produced from renewable energy sources into the interconnected grid. These rules must be based on objective, transparent and non-discriminatory criteria taking particular account of all the costs and benefits associated with the connection of these producers to the grid; and they may provide for different types of connection¹⁵. Transmission system operators and distribution system operators must be required to provide any new producer wishing to be connected with a comprehensive and detailed estimate of the costs associated with the connection¹⁶. Member states must put into place a legal framework or require transmission system operators and distribution system operators to set up and publish their standard rules relating to the sharing of costs of system installations, such as grid connections and reinforcements, between all producers benefiting from them; and the sharing must be enforced by a mechanism based on objective, transparent and non-discriminatory criteria taking into account the benefits which initially and subsequently connected producers as well as transmission system operators and distribution system operators derive from the connections¹⁷. They must ensure that the charging of transmission and distribution fees does not discriminate against electricity from renewable energy sources, including in particular electricity from renewable energy sources produced in peripheral regions, such as island regions and regions of low population density¹⁸.

The implementation of these provisions in domestic law is discussed elsewhere in this work¹⁹.

1 I.e. European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) on the promotion of electricity produced from renewable energy sources in the internal electricity market. See also European Parliament and EC Council Directive 2009/28 (OJ L140, 5.6.2009, p 16) on the promotion of electricity produced from renewable energy sources and amending and subsequently repealing Directives 2001/77 and 2003/30 (as to Directive 2003/30 see PARA 21). Directive 2009/28 sets out a common framework for the promotion of energy from renewable sources, which include wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases. In particular, these provisions establish mandatory national targets for the overall share of energy from renewable sources in gross final consumption of energy and for the share of energy from renewable sources in transport. Furthermore, it lays down rules relating to statistical transfers between member states, joint projects between EU member states and with third countries, guarantees of origin, administrative procedures, information and training, and access to the electricity grid for energy from renewable sources. The Directive also establishes sustainability criteria for biofuels and bioliquids. See generally art 1. This and related measures aim at putting the European Union on the forefront of action on climate and energy issues, contributing to reduce EU emissions by 20% in 2020. Directive 2009/28 must be implemented by member states by 5 December 2010 and Directives 2001/77 and 2003/30 are repealed with effect from 1 January 2012. Matters covered by Directive 2009/28 are: definitions (see art 2); mandatory national overall targets and measures for the use of energy from renewable sources (see art 3, Annex 1); national renewable energy actions plans (see art 4); calculation of the share of energy from renewable sources (see art 5); statistical transfers between member states (see art 6); joint projects between member states (see art 7); effect of joint projects between member states (see art 8); joint projects between member states and third countries (see art 9); effect of joint projects between member states and third countries (see art 10); joint support schemes (see art 11); capacity increases (see art 12); administrative procedures, regulations and codes (see art 13); information and training (see art 14); guarantees of origin of electricity, heating and cooling produced from renewable energy sources (see art 15); access to and operation of the grids (see art 16); sustainability criteria for biofuels and bioliquids (see art 17); verification of compliance with the sustainability criteria for biofuels and bioliquids (see art 18); calculation of the greenhouse gas impact of biofuels and bioliquids (see art 19); implementing measures (see art 20); specific provisions related to energy from renewable sources in transport (see art 21); reporting by member states (see art 22); monitoring and reporting by the Commission (see art 23); transparency platform (see art 24); committees (see art 25); amendments and repeal (see art 26); transposition (see art 27); entry into force (see art 28); addresses (see art 29); normalisation rule for accounting for electricity generated from hydropower and wind power (see Annex II); certification of installers (see Annex IV); rules for calculating the greenhouse gas impact of biofuels, bioliquids and their fossil fuel comparators (see Annex V); minimum requirements for the harmonised template for national renewable energy actions plans (see Annex VI); and accounting of energy from heat pumps (see Annex VII). See **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 639.

2 As to the internal market for electricity see **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 653.

3 See European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 1. See also European Parliament and EC Council Directive 2009/28 (OJ L140, 5.6.2009, p 16) art 1; and note 1.

4 'Consumption of electricity' means national electricity production, including autoproduction, plus imports, minus exports (gross national electricity consumption): European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 2(d).

5 For these purposes, 'renewable energy sources' means renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases); 'biomass' means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste; and 'electricity produced from renewable energy sources' means electricity produced by plants using only renewable energy sources, as well as the proportion of electricity produced from renewable energy sources in hybrid plants also using conventional energy sources and including renewable electricity used for filling storage systems, and excluding electricity produced as a result of storage systems: European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 2(a)-(c).

6 See European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 3(2). See European Parliament and EC Council Directive 2009/28 (OJ L140, 5.6.2009, p 16) art 3; and note 1. See in particular art 3(4) which has requirements for the Commission to present certain proposals by 31 December 2011.

7 See European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 3(1). See notes 1 and 6.

8 See European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 3(3). See notes 1 and 6.

9 See European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 5(1). See European Parliament and EC Council Directive 2009/28 (OJ L140, 5.6.2009, p 16) art 15; and note 1.

10 European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 5(2). See notes 1 and 9.

11 European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 5(3). See notes 1 and 9.

12 European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 5(4). See notes 1 and 9.

13 See European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 5(5). See notes 1 and 9.

14 European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 7(1). See also European Parliament and EC Council Directive 2009/28 (OJ L140, 5.6.2009, p 16) art 16; and note 1.

15 European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 7(2). Where appropriate, member states may require transmission system operators and distribution system operators to bear, in full or in part, the costs referred to in art 7(2): art 7(3). See notes 1 and 14.

16 European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 7(4). Member states may allow producers of electricity from renewable energy sources wishing to be connected to the grid to issue a call for tender for the connection work: art 7(4). See notes 1 and 14.

17 European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 7(5). See notes 1 and 14.

18 European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) art 7(6). Where appropriate, member states must put in place a legal framework or require transmission system operators and distribution system operators to ensure that fees charged for the transmission and distribution of electricity from plants using renewable energy sources reflect realisable cost benefits resulting from the plant's connection to the network. Such cost benefits could arise from the direct use of the low-voltage grid: art 7(6). See notes 1 and 14.

19 See **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1219 et seq.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/1. LEGISLATION/(2) EUROPEAN UNION LEGISLATION/(v) Environmental Energy Efficiency/21. Promotion of biofuels or other renewable fuels for transport.

21. Promotion of biofuels or other renewable fuels for transport.

There is European Union legislation¹ aimed at promoting the use of biofuels or other renewable fuels² to replace diesel or petrol for transport purposes in each member state, with a view to contributing to objectives such as meeting climate change commitments, environmentally friendly security of supply and promoting renewable energy sources³. Member states must ensure that a minimum proportion of biofuels and other renewable fuels is placed on their markets, and, to that effect, must set national indicative targets⁴. They must ensure that information is given to the public on the availability of biofuels and other renewable fuels and must impose a specific labelling at the sales points of certain percentages of biofuels blended in mineral oil derivatives⁵. For the purposes of implementing these labelling requirements in domestic law the Biofuel (Labelling) Regulations 2004⁶ were made.

1 See European Parliament and EC Council Directive 2003/30 (OJ L123, 17.5.2003, p 42) on the promotion of the use of biofuels or other renewable fuels for transport. See also European Parliament and EC Council Directive 2009/28 (OJ L140, 5.6.2009, p 16) on the promotion of electricity produced from renewable energy sources and amending and subsequently repealing Directives 2001/77 and 2003/30 (as to Directive 2001/77 see PARA 20). Directive 2009/28 sets out a common framework for the promotion of energy from renewable sources, which include wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases. In particular, these provisions establish mandatory national targets for the overall share of energy from renewable sources in gross final consumption of energy and for the share of energy from renewable sources in transport. Furthermore, it lays down rules relating to statistical transfers between member states, joint projects between EU member states and with third countries, guarantees of origin, administrative procedures, information and training, and access to the electricity grid for energy from renewable sources. The Directive also establishes sustainability criteria for biofuels and bioliquids. This and related measures aim at putting the European Union on the forefront of action on climate and energy issues, contributing to reduce EU emissions by 20% in 2020. Directive 2009/28 must be implemented by member states by 5 December 2010 and Directives 2001/77 and 2003/30 are repealed with effect from 1 January 2012. As to preliminary rulings as to the interpretation of Directive 2003/30 and the principles of legal certainty and the protection of legitimate expectations see Case C-201/08: *Plantanol GmbH & Co KG v Hauptzollamt Darmstadt* [2009] All ER (D) 76 (Sep), ECJ. As to matters covered by Directive 2009/28 see PARA 21 note 1. See **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 640.

2 For these purposes, 'biofuels' means liquid or gaseous fuel for transport produced from biomass; 'biomass' means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste; and 'other renewable fuels' means renewable fuels, other than biofuels, which originate from renewable energy sources as defined in European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33) (see PARA 20 note 5) and used for transport purposes: European Parliament and EC Council Directive 2003/30 (OJ L123, 17.5.2003, p 42) art 2(1)(a)-(c). See further arts 2(2), 5. See also European Parliament and EC Council Directive 2009/28 (OJ L140, 5.6.2009, p 16) art 2; and note 1.

3 See European Parliament and EC Council Directive 2003/30 (OJ L123, 17.5.2003, p 42) art 1. See note 1.

4 See European Parliament and EC Council Directive 2003/30 (OJ L123, 17.5.2003, p 42) art 3. See also European Parliament and EC Council Directive 2009/28 (OJ L140, 5.6.2009, p 16) arts 3, 4; and note 1.

5 See European Parliament and EC Council Directive 2003/30 (OJ L123, 17.5.2003, p 42) art 3(5). See note 1.

6 See the Biofuel (Labelling) Regulations 2004, SI 2004/3349, regs 3, 4, Schedule (reg 3 amended by SI 2009/3277; and the Biofuel (Labelling) Regulations 2004, SI 2004/3349, Schedule amended by SI 2005/3355; and SI 2009/3277). As to excise duties on biofuels see the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065 (amended by SI 2007/1640). If a quantity of biofuel has been charged with biofuels duty, and used as motor fuel in a generator to produce electricity, then on the written application of a qualified claimant (ie a person who causes biofuel to be used as motor fuel in a generator to

produce electricity), relief is afforded of the amount of the biofuels duty that has been charged and paid; but no relief is allowed in respect of any biofuels duty that is the subject of any other application or claim for repayment, remission or drawback: Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004, SI 2004/2065, regs 20, 21. For the form of relief see reg 22; as to set-off see reg 23; as the method of making an application for relief see reg 24; and as to the conditions to which relief is subject see regs 26, 27. If there is a contravention of, or failure to comply with, any condition imposed by or under reg 26 or reg 27, the relief allowed is to be cancelled and any person who is a qualified claimant in relation to the application for relief is liable on demand to repay the amount of the relief: reg 25. See also **FUEL AND ENERGY**.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/1. LEGISLATION/(2) EUROPEAN UNION LEGISLATION/(v) Environmental Energy Efficiency/22. Promotion of cogeneration.

22. Promotion of cogeneration.

There is European Union legislation¹ aimed at increasing energy efficiency² and improving the security of supply by creating a framework for promotion and development of high efficiency cogeneration³ of heat and power based on useful heat⁴ demand and primary energy savings in the internal energy market⁵, taking into account the specific national circumstances especially concerning climatic and economic conditions⁶. Among other matters, the legislation requires member states to ensure that the origin of electricity produced from high-efficiency cogeneration can be guaranteed according to objective, transparent and non-discriminatory criteria laid down by each member state, and that this guarantee of origin of the electricity enables producers to demonstrate that the electricity they sell is produced from high efficiency cogeneration and is issued to this effect in response to a request from the producer⁷. For the purposes of implementing these requirements in domestic law the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007⁸ were made.

1 See European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) on the promotion of cogeneration based on a useful heat demand in the internal energy market.

2 For these purposes, 'efficiency' means efficiency calculated on the basis of net calorific values of fuels (also referred to as 'lower calorific values'): European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) art 3(h).

3 'Cogeneration' means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy; and 'high efficiency cogeneration' means cogeneration meeting the criteria of European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) Annex III: see art 3(a), (i).

4 'Useful heat' means heat produced in a cogeneration process to satisfy an economically justifiable demand for heat or cooling; and 'economically justifiable demand' means the demand that does not exceed the needs for heat or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration: European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) art 3(b), (c).

5 As to the single market see **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 653.

6 See European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) art 1.

7 See European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) art 5.

8 See the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292; and **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 624 et seq.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/1. LEGISLATION/(2) EUROPEAN UNION LEGISLATION/(vi) Water Pollution and Water Quality/23. Introduction.

(vi) Water Pollution and Water Quality

23. Introduction.

The control of pollution of water is increasingly regulated by European Union legislation which either has direct effect or is effective through national legislation made pursuant to an EU Directive¹. This control is experienced in the manner in which United Kingdom² pollution control legislation is drafted and in the manner in which the national courts determine liability³.

Generally EU Directives dealing with water pollution⁴ may be divided into three categories: (1) those concerned with protecting water from particular kinds of pollutants⁵; (2) those concerned with the pollution of particular waters⁶; and (3) those concerned with particular polluting activities⁷. The law relating to water pollution is dealt with below as is marine pollution⁸. In addition, the Water Framework Directive⁹ provides an overarching structure for water quality generally.

The functions of the Secretary of State, the Welsh Ministers and the Environment Agency¹⁰ under the relevant enactments relating to pollution control must be exercised so as to secure compliance with the requirements of the Water Framework Directive¹¹. In relation to marine areas any competent authority having functions relevant to marine conservation must exercise those functions so as to secure compliance with the requirements of the Habitats Directive¹².

1 I.e. whether through Acts of Parliament or statutory instruments made for the purposes of implementing appropriate Directives: see eg the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841; and PARA 30.

Under the Water Resources Act 1991 (as to which generally see **WATER AND WATERWAYS**) the Secretary of State has power to provide by regulations that the water pollution provisions of the Water Resources Act 1991 are to have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's government in the United Kingdom to give effect to any Community obligations or to any international agreement to which the United Kingdom is for the time being a party: s 102. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the meaning of 'water pollution provisions' see **WATER AND WATERWAYS** vol 101 (2009) PARA 479 note 16. 'Prescribed' means prescribed by the Secretary of State: see the Water Resources Act 1991 s 221. 'Community obligation' means such an obligation within the meaning of the European Communities Act 1972: see the Interpretation Act 1978 s 5, Sch 1. In the exercise of this power under the Water Resources Act 1991 a 102 among others, the Secretary of State has made eg (1) the Surface Waters (Dangerous Substances) (Classification) Regulations 1997, SI 1997/2560, and the Surface Waters (Dangerous Substances) (Classification) Regulations 1998, SI 1998/389, modifying the Water Resources Act 1991 s 83 (see PARA 331); and (2) the Bathing Waters (Classification) (England) Regulations 2003, SI 2003/1238 (revoked by SI 2008/1097 from 24 March 2015), modifying the Water Resources Act 1991 s 104(1) (see PARA 289). See also the Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996, SI 1996/3001; the Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331 (amended by SI 2009/1264); and the Surface Waters (Shellfish) (Classification) Regulations 1997, SI 1997/1332 (amended by SI 2009/1266). In addition, by virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 para 1(1), (2), the Surface Waters (Dangerous Substances) (Classification) Regulations 1989, SI 1989/2286, partly have effect as if so made.

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 Eg, the integrated pollution control regime under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) and under the Pollution Prevention and Control Act 1999 (see PARA 157 et seq) takes into account the requirements of European Directives as to levels of toxic chemicals in discharges into the environment and was passed for the purposes of implementing European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control. In proceedings in United

Kingdom courts, non-compliance with a European Directive may be determinative of liability in nuisance, eg if a given discharge into the water environment exceeds European limits for a particular substance, then such a breach may be relevant to the issue of whether there has been a breach of the duty of care or whether the activity is a 'reasonable user' for the purposes of establishing liability in nuisance. As to common law and water pollution generally see PARA 270 et seq.

4 See also **WATER AND WATERWAYS** vol 100 (2009) PARA 2.

5 See eg European Parliament and EC Council Regulation 648/2004 (OJ L104, 8.4.2004, p 1) on detergents; EEC Council Directive 79/117 (OJ L33, 8.2.79, p 36) prohibiting the placing on the market and use of plant protection products containing certain active substances; and European Parliament and EC Council Directive 2006/11 (OJ L64 4.3.2006, p 52) on the pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (Codified version) (see also PARA 24). See also European Parliament and EC Council Regulation 850/2004 (OJ L229, 29.6.2004, p 5) on persistent organic pollutants and amending Directive 79/117; and the Persistent Organic Pollutants Regulations 2007, SI 2007/3106. As to provisions relating to titanium dioxide see PARA 38; and as to provisions relating to asbestos see PARA 47.

6 See eg EEC Council Directive 75/440 (OJ L194, 25.7.75, p 26) concerning the quality required of surface water intended for the abstraction of drinking water in the member states (now repealed and replaced by European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy: see note 9); EEC Council Directive 80/68 (OJ L20, 26.1.80, p 43) on the protection of groundwater against pollution caused by certain dangerous substances; European Parliament and EC Council Directive 2006/7 (OJ L64, 4.3.2006, p 37) concerning the management of bathing water quality and repealing Directive 76/160 (see also PARA 29); European Parliament and EC Council Directive 2006/113 (OJ L376, 27.12.2006, p 14) on quality required of shellfish waters (Codified version) (see also PARA 27); and European Parliament and EC Council Directive 2006/44 (OJ L264, 25.9.2006, p 20) on the quality of fresh waters needing protection or improvement to support fish life (see also PARA 26).

7 See eg EEC Council Directive 91/271 (OJ L135, 30.5.91, p 40) concerning urban waste water treatment (see also PARA 30); and EEC Council Directive 91/676 (OJ L375, 31.12.91, p 1) concerning the protection of waters against pollution caused by nitrates from agricultural sources (see also PARA 31).

8 As to water pollution generally see PARA 270 et seq. As to marine pollution see PARA 347 et seq. See note 9.

9 Ie European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy: see further **WATER AND WATERWAYS** vol 100 (2009) PARA 7. The transposition date for domestic legislation was 22 December 2003: see European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) art 24(1). In the United Kingdom, the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003, SI 2003/3242, and the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003, SI 2003/3245, were made for the purposes of implementing the Directive: see **WATER AND WATERWAYS** vol 100 (2009) PARA 198 et seq. See also PARA 24 et seq.

The Water Framework Directive's counterpart is European Parliament and EC Council Directive 2008/56 (OJ L164, 25.6.2008, p 19) establishing a framework for Community action in the field of marine environmental policy ('the Marine Strategy Framework Directive'): see generally also further **SHIPPING AND MARITIME LAW** vol 93 (2009) PARA 7. As to shipping and pollution see PARA 347 et seq.

10 As to the Environment Agency see PARA 68 et seq.

11 See the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003, SI 2003/3242, reg 3(1), (3), Sch 2; and **WATER AND WATERWAYS** vol 100 (2009) PARA 198.

12 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 3(3); and **WATER AND WATERWAYS** vol 101 (2009) PARA 679. However see now also the Conservation of Habitats and Species Regulations 2010, SI 2010/490 (which replace and consolidate the 1994 Regulations); and **OPEN SPACES AND COUNTRYSIDE**. As to the Habitats Directive (EC Council Directive 92/43 (OJ L206, 22.07.92, p 07)) see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq. See also PARAS 18, 54.

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24. The Aquatic Environment Directive.

The principal European Union Directive controlling the discharge of dangerous substances into the water environment is the Aquatic Environment Directive¹ which sets out a framework for the control of listed substances² into inland surface waters³ and internal coastal waters⁴ and stands parallel with the Groundwater Directive⁵ which controls the entry of similar substances into groundwaters. The Aquatic Environment Directive specifies List I and List II⁶ substances, the so-called black and grey lists which seek in the case of black list substances to eliminate them from discharges⁷ and in the case of grey list substances to reduce them⁸. The Directive's objectives are achieved either by a fixed limit approach⁹ or an environmental quality objective approach¹⁰. Daughter Directives then set limits for individual substances or groups of substances¹¹. Discharges of substances regulated by the Directive into the water environment must be authorised by the Environment Agency¹². There is an obligation to monitor surface waters¹³ and take samples¹⁴.

The Aquatic Environment Directive is, however, prospectively repealed, with effect from 22 December 2013, by the Water Framework Directive¹⁵. Transitional arrangements are made which replace the list of priority substances under the earlier Directive with the list of priority substances adopted under the later Directive¹⁶. Until the repeal is effective, member states may apply¹⁷ the principles for the identification of pollution problems and the substances causing them, the establishment of quality standards, and the adoption of measures, laid down in the Water Framework Directive¹⁸.

1 Ie European Parliament and EC Council Directive 2006/11 (OJ L64 4.3.2006, p 52) on the pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (Codified version) (prior to codification EC Council Directive 76/464 (OJ L129, 18.05.76, p 23)). (This was previously referred to as the Dangerous Substances Directive.) For example, the Surface Waters (Dangerous Substances) (Classification) Regulations 1997, SI 1997/2560, and the Surface Waters (Dangerous Substances) (Classification) Regulations 1998, SI 1998/389, were made for the purposes of implementing the Directive: see PARA 330.

2 The listed substances are those whose presence the Directive seeks to eliminate or control.

3 Ie all static or flowing fresh surface waters.

4 Ie waters on the landward side of the baseline from which territorial waters are measured, up to the fresh-water limits in rivers.

5 Ie EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) on the protection of groundwater against pollution caused by certain dangerous substances: see PARA 28.

6 There are over 50,000 substances on List I; these were reduced to a list of 129 priority substances by an EC Council Resolution and that list has now been replaced by a list of substances adopted under the Water Framework Directive: see the text and note 16. As to the Water Framework Directive see PARA 23.

7 See EC Council Directive 86/280 (OJ L 181, 04.07.86, p 16), which sets out a framework for implementation of the Directive in relation to List I substances as specified in the various daughter Directives. EC Council Directive 76/464 (OJ L129, 18.05.76, p 23) (now codified as European Parliament and EC Council Directive 2006/11 (OJ L64 4.3.2006, p 52): see note 1) is not limited to the discharge of listed substances in the liquid state and can apply to an emission of contaminated steam either precipitated directly on to surface water or where it reaches that water via a storm water drain, after being precipitated on to land and roofs: Case C-231/97: *AML van Rooij v Dagelijks Bestuur van het Waterschap de Dommel* [1999] ECR I-6355, [1999] All ER (D) 1038, ECJ. The escape of creosote and, hence, the pollution of surface waters as the consequence of the introduction into those waters of wooden posts treated with creosote constitutes a 'discharge': see Case C-

232/97: *Nederhoff v Dijkgraaf en Hoohheemraden van het Hoogheemraadschap Rijnland* [1999] ECR I-6385, [2000] 1 CMLR 681, [1999] All ER (D) 1037, ECJ.

8 See EC Council Directive 76/464 (OJ L129, 18.05.76, p 23) art 7(1) which imposes an obligation on member states to establish programmes for the reduction of surface water pollution by List II substances; but see the text and notes 17-18. See also European Parliament and EC Council Directive 2006/11 (OJ L64 4.3.2006, p 52); and note 1.

9 Ie by the imposition of conditions in authorisations and consents to discharge which limit the levels of given substances in the effluent discharged into surface waters. As to authorisations for discharges into the water environment under domestic legislation see PARA 298 et seq.

10 Environment quality objectives approach the problem by targeting standards for the receiving waters such that a discharge of effluent either on its own or in combination with other discharges achieved set standards for the quality of that receiving water. As to water quality objectives in domestic legislation see PARA 327 et seq.

11 Daughter Directives must be issued in respect of all List I substances. The individual approach to be taken to achieve compliance will be specified in the individual Directive. For examples of daughter Directives see EC Council Directive 84/491 (OJ L274, 17.10.84, p 11) (dealing with levels of hexachlorocyclohexane) and EC Council Directive 82/176 (OJ L81, 27.03.82, p 29) (dealing with mercury levels in discharges by the chlor-alkali industry).

12 Ie by virtue of integrated pollution control consents and/or consents to discharge trade or sewage effluent: see PARAS 334 et seq, 298 et seq respectively. As to the Environment Agency see PARA 68 et seq. The Directive permits member states to make the authorisation of a discharge subject to additional requirements not provided for in that Directive in order to protect the aquatic environment of the Community against pollution caused by certain dangerous substances; furthermore, the obligation to investigate or choose alternative solutions which have less impact on the environment constitutes such a requirement, even if it has the effect of making the grant of authorisation impossible or exceptional: see Case C-232/97: *Nederhoff v Dijkgraaf en Hoohheemraden van het Hoogheemraadschap Rijnland* [1999] ECR I-6385, [2000] 1 CMLR 681, [1999] All ER (D) 1037, ECJ.

13 Surface waters will be distinguishable from ground water. As to ground water see PARA 289.

14 As to requirements for sampling see the text and notes 17-18.

15 See European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 01) art 22(2).

16 See European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 01) art 22(3)(a).

17 Ie for the purposes of EC Council Directive 76/464 (OJ L129, 18.05.76, p 23) art 7: see now European Parliament and EC Council Directive 2006/11 (OJ L64 4.3.2006, p 52); and note 1.

18 European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 01), art 22(3)(b).

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25. Specific substances Directives.

In addition to the control of pollution of waters by the virtue of the Aquatic Environment Directive¹, there are a number of measures concerned with specific substances aimed at specific types of industry. These include the titanium dioxide industry², disposal of waste oils³, disposal of polychlorinated biphenyls and terphenyls⁴, detergents⁵, asbestos⁶, hazardous waste⁷, and nitrates from agricultural sources⁸.

1 See PARA 24.

2 See EC Council Directive 78/176 (OJ L54, 25.02.78, p 19); and PARA 48.

3 See EC Council Directive 75/439 (OJ L194, 25.07.75, p 23) (partially repealed with effect from 28 December 2005 and repealed from 2010 by the Waste Framework Directive (ie European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1)); and PARA 54. As to the failure by the United Kingdom government to fulfil its obligations under Directive 75/439 see Case C-424/02: *EC Commission v United Kingdom* [2004] ECR I-7249, [2004] All ER (D) 263 (Jul), ECJ.

4 See EC Council Directive 96/59 (OJ L243, 24.09.96, p 31); and PARA 45.

5 See European Parliament and EC Council Regulation 648/2004 (OJ L104, 08.04.2004, p 01) on detergents, which has direct effect. Provision is made for the enforcement and breach of European Parliament and EC Council Regulation 648/2004 by the Detergents Regulations 2005, SI 2005/2469.

6 See EC Council Directive 87/217 (OJ L85, 28.03.87, p 40); and PARA 33.

7 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2000, p 91) on the incineration of waste. As to waste disposal see PARA 51 et seq.

8 See EC Council Directive 91/676 (OJ L375, 31.12.91, p 1); and PARA 31.

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26. The Freshwater Fish Life Directive.

The purpose of the Freshwater Fish Life Directive is to encourage the establishment of standards in water quality suitable to sustaining populations of given species of fish¹. The Directive contemplates the designation of salmonid² and cyprinid³ waters⁴. Annex I to the Directive sets parameters for which samples should be tested⁵. In the case of some parameters all samples should comply, in others 95 per cent should comply⁶. The practical implementation of the Directive occurs through determination of discharge consent applications and monitoring of river water samples by the Environment Agency⁷; the water quality standards required under the Directive are reflected in the classifications 'SW' and 'CW' as set out in the Surface Waters (Fishlife) (Classification) Regulations 1997⁸.

The Directive is prospectively repealed by the Water Framework Directive, with effect from 22 December 2013⁹.

1 See European Parliament and EC Council Directive 2006/44 (OJ L264 25.9.2006 p 20) on the quality of fresh waters needing protection or improvement in order to support fish life.

2 I.e. salmon, sea trout or brown trout.

3 I.e. all species of coarse fish.

4 The phrase 'waters' is defined by reference to their capacity to support salmonid or cyprinid species respectively. The Directive's effect extends only to waters designated by member states, which cannot include water in natural or artificial fish ponds: see European Parliament and EC Council Directive 2006/44 (OJ L264 25.9.2006 p 20) arts 1, 2.

5 The parameters in question are to establish physical and chemical water quality standards listed in European Parliament and EC Council Directive 2006/44 (OJ L264 25.9.2006 p 20) Annex I. Some values are 'imperative' so that those parameters should not be exceeded; others are 'guide' values which represent standards that should be aimed at.

6 Compliance with standards is deemed to occur when 95% of samples over a given period comply: see European Parliament and EC Council Directive 2006/44 (OJ L264 25.9.2006 p 20) art 6.

7 See PARA 298 et seq.

8 See the Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331; and PARA 330.

9 See European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 01) art 22(2). As to the Water Framework Directive see PARA 23.

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27. The Shellfish Waters Directive.

The Shellfish Waters Directive concerns the quality of shellfish waters and applies to those coastal and brackish waters designated by the member states as needing protection or improvement in order to support shellfish¹ life and growth and thus to contribute to the high quality of shellfish products directly edible by man². The Directive contemplates the designation of shellfish waters and sets parameters for which samples should be tested³. The water quality standards required under the Directive are reflected in the classification 'SFW' set out in the Surface Waters (Shellfish) (Classification) Regulations 1997⁴.

The Directive is prospectively repealed by the Water Framework Directive, with effect from 22 December 2013⁵.

1 le bivalve and gasteropod molluscs.

2 See European Parliament and EC Council Directive 2006/113 (OJ L376 27.12.2006 p 14) on the quality required of shellfish waters (Codified version).

3 See European Parliament and EC Council Directive 2006/113 (OJ L376 27.12.2006 p 14) arts 2-8, Annex I.

4 See the Surface Waters (Shellfish) (Classification) Regulations 1997, SI 1997/1332; and PARA 330.

5 See European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 01) art 22(2). As to the Water Framework Directive see PARA 23.

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28. The Groundwater Directives.

The original Groundwater Directive¹ is complementary to the Aquatic Environment Directive² in providing a system for the control of discharges of dangerous substances into groundwater³, as opposed to surface waters. The purpose of the Directive is to prevent or alleviate the effect of discharges into groundwater in order to prevent the pollution⁴ of those groundwaters. The Directive sets out List 1⁵ and List 2⁶ substances and member states must take steps to prevent discharges of List 1 substances⁷ and to control discharges of List 2 substances by the imposition of conditions in authorisations to discharge effluent containing List 2 substances into groundwater⁸. Pumping water into groundwater sources must be the subject of a special authorisation⁹. Such authorisations must comply with criteria set out by the Directive¹⁰ and must be reviewed at least every four years¹¹. The implementation of the Groundwater Directive in the United Kingdom was effected (1) through the discharge consent system under the Water Resources Act 1991¹²; and (2) by Groundwater Regulations¹³. Member states are required to keep an inventory of authorisations¹⁴, and to submit a triannual report to the Commission as to compliance with the Directive¹⁵.

The Directive is prospectively repealed by the Water Framework Directive, with effect from 22 December 2013¹⁶. A secondary or complementary measure adopted under the Water Framework Directive is a further Groundwater Directive on the protection of groundwater against pollution and deterioration¹⁷.

1 Ie EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) on the protection of ground water against pollution caused by certain dangerous substances.

2 See PARA 24.

3 For these purposes, 'groundwater' means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil: EC Council Directive 80/68 (OJ L20, 26.1.80, p 43) art 1(2)(a). In the United Kingdom, however, the broader definition of 'ground waters' contained in the Water Resources Act 1991 s 104 (see PARA 289) should be applied.

4 As to the meaning of 'pollution' see EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) art 1(2)(d).

5 'List 1 substances' are those which member states are required to prevent from entering groundwater: see EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) art 3(a).

6 'List 2 substances' are substances of which member states must control the amounts that enter groundwaters by a system of authorisations: see EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) art 3(b), Annex.

7 List 1 and List 2 substances are for the most part the same as those listed in the Aquatic Environment Directive, although there are some differences. Prevention of entry of List 1 substances into ground water relates to direct discharges: see EC Council Directive 80/68 (OJ L20, 26.1.80, p 43) art 4(1). In the case of indirect discharges, ie by percolation, the control of such discharges of List 1 substances should be achieved through the control of such percolation as a term of authorisations: art 4(2).

8 List II substances may be discharged directly into ground water provided that all technical measures for preventing pollution are taken: see EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) art 3. No authorisations may be issued unless the effect of the discharge has been investigated in accordance with art 7.

9 See EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) art 6.

- 10 Member states are bound to set up a system of monitoring compliance with authorisations issued: see EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) art 13.
- 11 See EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) art 11.
- 12 As to system of consents to discharge effluent into controlled waters see PARA 299 et seq.
- 13 See the Groundwater Regulations 1998, SI 1998/2746, which have now been revoked and replaced by the Groundwater (England and Wales) Regulations 2009, SI 2009/2902: see PARA 335.
- 14 See EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) art 15.
- 15 See EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) art 16.
- 16 See European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 01) art 22(2). As to the Water Framework Directive (ie Directive 2000/60) see PARA 23.
- 17 See European Parliament and EC Council Directive 2006/118 (OJ L372 27.12.2006 p 19) on the protection of groundwater against pollution and deterioration. Directive 2006/118 establishes criteria (1) for the assessment of 'good groundwater chemical status' (art 3); and (2) for the identification and reversal of significant and sustained upward trends in pollution and for the definition of starting points for trend reversals (art 5). It complements the provisions in Directive 2000/60 (OJ L327, 22.12.2000, p 01) (the Water Framework Directive) preventing or limiting inputs of pollutants into groundwater. Member state implementing measures must be in place before 16 January 2009: Directive 2006/118 art 12. From that date any new authorisation procedure pursuant to Directive 80/68 (the Groundwater Directive) arts 4, 5 must take into account the requirements set out in Directive 2006/118 arts 3-5. As to implementation in the United Kingdom see the Groundwater (England and Wales) Regulations 2009, SI 2009/2902; note 13; and PARA 335.

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29. The Bathing Water Directive.

The Bathing Water Directive¹ sets out provisions for the monitoring, classification and management of bathing water quality and the provision of relevant information to the public². The purpose of the Directive is to preserve, protect and improve the quality of the environment and to protect human health³. It applies to any element of surface water where the competent authority expects a large number of people to bathe and in relation to which it has not permanently banned or issued advice against bathing, and it does not include swimming pools, spa pools, confined waters subject to treatment or used for therapeutic purposes or artificially confined waters separated from surface water and groundwater⁴.

1 I.e. European Parliament and EC Council Directive 2006/7 (OJ L64 4.3.2006 p 37) concerning the management of bathing water quality and repealing Directive 76/160. For the purposes of implementing Directive 2006/7 the Bathing Water Regulations 2008, SI 2008/1097 (generally in force from 2012, 2015) were made: see PARAS 148, 330, 345. See also the Bathing Waters (Classification) Regulations 1991, SI 1991/1597; and PARA 330.

2 See European Parliament and EC Council Directive 2006/7 (OJ L64 4.3.2006 p 37) art 1.

3 See European Parliament and EC Council Directive 2006/7 (OJ L64 4.3.2006 p 37) art 2.

4 See European Parliament and EC Council Directive 2006/7 (OJ L64 4.3.2006 p 37) art 3. Failure to comply with the Directive may lead to the imposition of financial penalties partly based on the percentage of national bathing water areas failing to comply with the required standards (see Case C-278/01: *EC Commission v Spain* [2003] ECR I-14141, [2003] All ER (D) 340 (Nov), ECJ); and as to failure by the United Kingdom government to fulfil its obligations under the Directive see Case C-427/00: *EC Commission v United Kingdom* [2001] ECR I-8535, ECJ (both cases are in the context of the previous Directive, EC Council Directive 76/160 (OJ L31, 05.02.76, p 01)).

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30. The Urban Waste Water Treatment Directive.

The Urban Waste Water Treatment Directive¹ is designed to control the levels of pollution generated through sewage disposal² and direct discharges from industries whose effluent has a similar effect to sewage effluent³. Receiving waters are designated as sensitive, normal or less sensitive and standards of effluent quality are to be set accordingly⁴. The Directive provides that standards must be set for the quality of discharges of all urban waste water⁵ and member states were required to set standards in respect of given populations by given dates⁶. The Directive contains requirements as to the type and frequency of monitoring⁷. Member states are obliged to regulate the disposal of sludge generated by the sewage disposal process⁸.

1 le EC Council Directive 91/271 (OJ L135, 30.05.91, p 40) concerning urban waste-water treatment. For the purposes of implementing the Directive in the United Kingdom the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, were made, which supplement the general duty imposed on sewerage undertakers under the Water Industry Act 1991 s 94 (see PARA 1010) by requiring them to secure that collecting systems are provided by specified dates and that urban waste water entering collecting systems is subject to treatment: see the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, regs 4, 5 (amended by the Environment Act 1995 Sch 22 para 233(1)). As to samples and records, monitoring and the deposit of maps and certificates see the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, regs 10-12 (amended by the Environment Act 1995 Sch 22 para 233(1); and SI 2003/1788). As to the 1994 Regulations see further PARA 336; and as to the provision of sewerage services see generally PARA 1010 et seq.

2 le effluent from sewage treatment works operated by sewerage undertakers.

3 See EC Council Directive 91/271 (OJ L135, 30.05.91, p 40) Annex II. Examples are the milk processing and brewing industries.

4 It makes no difference for these purposes whether the waste water discharges directly or indirectly into a sensitive area: see Case C-396/00: *EC Commission v Italy* [2002] ECR I-3949, [2002] All ER (D) 310 (Apr), ECJ. See also Case C-119/02: *EC Commission v Greece* [2004] All ER (D) 280 (Jun), ECJ. As to failure to identify sensitive areas see Case C-280/02: *EC Commission v France* [2004] ECR I-8573, [2004] All ER (D) 142 (Sep), ECJ; and see also Case C-390/07: *EC Commission v United Kingdom* [2009] All ER (D) 224 (Dec), ECJ.

5 See EC Council Directive 91/271 (OJ L135, 30.05.91, p 40) art 13.

6 See EC Council Directive 91/271 (OJ L135, 30.05.91, p 40) art 3.

7 See EC Council Directive 91/271 (OJ L135, 30.05.91, p 40) art 15.

8 See EC Council Directive 91/271 (OJ L135, 30.05.91, p 40) art 2(10).

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31. The Agricultural Nitrates Directive.

The Agricultural Nitrates Directive¹ is intended to reduce the level of pollution by nitrates from agricultural sources and to prevent further pollution from that source². Member states must identify polluted and vulnerable waters³ by monitoring schemes⁴. The designation of zones should be reviewed at least every four years⁵.

Member states were obliged to establish action programmes by December 1995 in relation to vulnerable waters initially designated⁶, which were to be completed by December 1999. Any subsequent programme must be completed within four years of its inception⁷. The programmes must consist of mandatory measures, which, as a minimum, must include the measures set out in Annex 3 to the Agricultural Nitrates Directive⁸. Member states must also adopt codes of good agricultural practice, to provide all waters with standards for protection against pollution⁹. These codes must contain measures set out in Annex IIA to the Nitrates Directive, and may include measures set out in Annex IIB thereto¹⁰. Member states must make a report to the Commission every four years¹¹.

For the purposes of implementing the Directive the Protection of Water against Agricultural Nitrate Pollution (England and Wales) Regulations 1996 and the Action Programme for Nitrate Vulnerable Zones (England and Wales) Regulations 1998¹² were made but they have now been replaced by the Nitrate Pollution Prevention Regulations 2008 and the Nitrate Pollution Prevention (Wales) Regulations 2008¹³.

1 le EC Council Directive 91/676 (OJ L375, 31.12.91, p 01) concerning the protection of waters against pollution caused by nitrates from agricultural sources. As to failure by the United Kingdom to fulfil its obligations under the Nitrates Directive see Case C-69/99: *EC Commission v United Kingdom* [2000] ECR I-10979, (2000) Times, 19 December, ECJ; as to failure by the Netherlands to fulfil its obligations see Case C-322/00: *EC Commission v Netherlands* [2003] ECR I-11267, [2003] All ER (D) 41 (Oct), ECJ.

2 See EC Council Directive 91/676 (OJ L375, 31.12.91, p 01) art 1.

3 See EC Council Directive 91/676 (OJ L375, 31.12.91, p 01) art 3. This must be done in accordance with criteria set out in Annex 1. The principal purpose is to designate waters, which includes surface waters and ground waters, which obtain, or could do so, more than 50mg/l of nitrates or which are or may become eutrophic. As to the meanings of 'surface water' and 'ground waters' in domestic legislation see PARA 289.

Member states are not required by art 3(1) to determine precisely what proportion of the pollution in the waters is attributable to nitrates of agricultural origin or determine that the cause is exclusively agricultural; art 5 expressly provides that the respective nitrogen contributions originating from agricultural 'and other' sources are to be taken into account. Furthermore, art 3(5) allows member states to designate the whole of their territory as a nitrate vulnerable zone instead of identifying waters affected by pollution, which means that they can establish action programmes regardless of the levels of pollution. The Directive only applies where the discharge of nitrogen compounds of agricultural origin has made a 'significant contribution' to the pollution; but Community law cannot provide precise criteria for establishing in each case whether there is such a significant contribution; thus, in reviewing the legality of measures identifying waters affected by pollution in accordance with art 3(1), national courts have to take account of the wide discretion enjoyed by member states: see Case C-293/97: *R v Secretary of State for the Environment, ex p Standley (National Farmers' Union intervening)* [1999] QB 1279, [1999] All ER (EC) 412, [1999] ECR I-2603, ECJ. Restricting the scope of the Directive to exclude certain categories of waters on the basis of the fundamental role of phosphorus in the pollution of those waters is, however, incompatible with both the logic and objective of the Directive since nitrogen pollution can nevertheless be present: Case C-258/00 *EC Commission v France* [2002] ECR I-5959, [2002] All ER (D) 224 (Jun), ECJ.

4 See EC Council Directive 91/676 (OJ L375, 31.12.91, p 01) art 6.

- 5 See EC Council Directive 91/676 (OJ L375, 31.12.91, p 01) art 3(4).
- 6 See EC Council Directive 91/676 (OJ L375, 31.12.91, p 01) art 5.
- 7 See EC Council Directive 91/676 (OJ L375, 31.12.91, p 01) art 5(4).
- 8 As to the implementation of the Directive see the text and notes 11-12.
- 9 See EC Council Directive 91/676 (OJ L375, 31.12.91, p 01) art 4; the Water (Prevention of Pollution) (Code of Practice) Order 1998, SI 1998/3084 (revoked in regard to England by SI 2009/46); and PARA 320. See also the Water (Prevention of Pollution) (Code of Good Agricultural Practice) Order 2009, SI 2009/46; and PARA 320.
- 10 See EC Council Directive 91/676 (OJ L375, 31.12.91, p 01) Annex II.
- 11 See EC Council Directive 91/676 (OJ L375, 31.12.91, p 01) art 10.
- 12 See the Protection of Water against Agricultural Nitrate Pollution (England and Wales) Regulations 1996, SI 1996/888; and the Action Programme for Nitrate Vulnerable Zones (England and Wales) Regulations 1998, SI 1998/1202.
- 13 See the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349; and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143; and PARAS 318-319. It is to be noted that these new regulations do not re-enact the provisions relating to action programmes covered in the Action Programme for Nitrate Vulnerable Zones (England and Wales) Regulations 1998, SI 1998/1202, referred to in note 12.

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32. The Surface Freshwater Directives.

There were two main EU Directives concerned with the quality required of surface water intended for the abstraction of drinking water in the member states. The 1975 Surface Freshwater Directive¹ concerned the quality requirements which surface freshwater used or intended for use in the abstraction of drinking water ('surface water') must meet after application of appropriate treatment and its object is to reduce or prevent pollution of such water. The 1979 Surface Freshwater Directive² laid down the methods of measurement of the relevant parameters and the frequencies of sampling and analysis of such surface freshwater, and amends the earlier Directive in this respect. Both Directives were repealed by the Water Framework Directive, with effect from 22 December 2007³. Reference should also be made to the Drinking Water Directive⁴ which is discussed elsewhere in this work⁵.

1 Ie EC Council Directive 75/440 (OJ L194, 25.07.75, p 26) concerning the quality required of surface water intended for the abstraction of drinking water in the member states.

2 Ie EC Council Directive 79/869 (OJ L271, 29.10.79, p 44) concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the member states.

3 See European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 01) art 22(1). As to the Water Framework Directive see PARA 23.

4 Ie EC Council Directive 98/83 (OJ L330, 5.12.98, p 32) on the quality of water intended for human consumption.

5 See **WATER AND WATERWAYS** vol 100 (2009) PARA 371.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/1. LEGISLATION/(2) EUROPEAN UNION LEGISLATION/(vii) Waste Management/A. IN GENERAL/33. Introduction.

(vii) Waste Management

A. IN GENERAL

33. Introduction.

There is European Union legislation dealing generally with the management, treatment and disposal of waste¹. The legislation sets out a definition of waste².

Member states must take appropriate measures to encourage:

- 11 (1) the prevention or reduction of waste production and its harmfulness, in particular by: (a) the development of clean technologies more sparing in their use of natural resources; (b) the technical development and marketing of products designed so as to make no contribution or to make the smallest contribution, by the nature of their manufacture, use or final disposal, to increasing the amount of harmfulness of waste and pollution hazards; and (c) the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery; and
- 12 (2) the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials, or the use of waste as a source of energy³.

Member states must also take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment⁴. Appropriate measures must be taken, in co-operation with other member states where this is necessary or advisable, to establish an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive cost⁵. In order to attain these objectives, the competent authority or authorities⁶ must draw up as soon as possible one or more waste management plans⁷.

Any establishment or undertaking which carries out certain disposal or recovery operations must generally obtain a permit from the competent authority⁸. Certain establishments or undertakings which collect or transport waste on a professional basis or which arrange the disposal or recovery of waste on behalf of others (dealers or brokers), where not subject to authorisation, must be registered with the competent authorities⁹.

There is also legislation aimed at harmonising laws of the member states on the controlled management of hazardous waste¹⁰ and in regard to end of life vehicles¹¹ and waste electrical and electronic equipment¹².

Waste management is a component of integrated pollution prevention and control¹³.

1 See EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) on waste (the 'Waste Framework Directive') (amended by EEC Council Directive 91/156 (OJ L78, 26.3.91, p 32); EEC Council Directive 91/692 (OJ L377, 31.12.91, p 48); and EC Commission Decision 96/350 (OJ L135, 6.6.96, p 32)). See also European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) on waste (amended by European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 14)) which is effectively a codification of EEC Council Directive

75/442 and its amendments. Reference should also be made generally to the Water Framework Directive (ie European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3) on waste and repealing certain Directives): see also note 10. For the purposes of implementation in the United Kingdom note that the Waste Management Licensing Regulations 1994, SI 1994/1056, have now generally been replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARA 662 et seq; and see also PARA 661. As to the meaning of 'United Kingdom' see PARA 1 note 2. As to statistics relating to waste see European Parliament and EC Council Regulation 2150/2002 (OJ L332, 9.12.2002, p 1).

2 'Waste' means any substance or object in the categories set out in EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) Annex I which the holder discards or intends or is required to discard: art 1 (as substituted: see note 1). See also *Interpretative Communication on waste and by-products* (COM (2007) 59); and *Towards a Thematic Strategy on the prevention and recycling of waste* (COM (2003) 301). See further PARA 623.

Where a company has converted waste material into a distinct, marketable product that could be used in exactly the same way as an ordinary fuel, and with no worse environmental effects, that product ceased to be waste for the purposes of the waste regime in European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) (see note 1): *R (on the application of OSS Group Ltd) v Environment Agency* [2007] EWCA Civ 611, [2007] 3 CMLR 798, [2008] Env LR 8. For a reference to the European Court of Justice for a preliminary ruling relating to the interpretation of Directive 2006/12 art 15(a) and in particular the 'polluter pays' principle see Case C-254/08: *Futura Immobiliare srl Hotel Futura v Commune di Casoria* [2009] 3 CMLR 1519, [2009] All ER (D) 14 (Sep), ECJ.

3 See EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 3 (as substituted: see note 1). This approach prioritises recycling over energy recovery: see *R v Bolton Metropolitan Borough Council, ex p Kirkman* (1997) 76 P & CR 548, [1998] JPL 787.

4 See EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 4 (as substituted: see note 1). The objectives referred to are something different from material considerations. They are ends at which to aim whereas a material consideration is a factor to be taken into account when making a decision and the objective to be attained would be such a consideration. See *R (on the application of Thornby Farms Ltd) v Daventry District Council, R (on the application of Murray) v Derbyshire County Council* [2002] EWCA Civ 31, [2003] QB 503, [2002] 3 WLR 875.

See Case C-236/92: *Comitato di Coordinamento per la Difesa della Cava v Regione Lombardia* [1994] ECR I-483, [1994] Env LR 281, ECJ (no direct effect of EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 4); Case C-365/97: *EC Commission v Italy* [1999] ECR I-7773; Case C-387/97: *EC Commission v Greece* [2000] ECR I-5047, ECJ (breach of EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 4 and financial penalties); Case C-494/01: *EC Commission v Ireland* [2006] All ER (EC) 188, [2005] ECR I-333, ECJ (discretion under EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 4). As to the translation of EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 4 into domestic obligations see also *R v Environment Agency and Redland Aggregates, ex p Gibson, R v Environment Agency and Redland Aggregates, ex p Leam, R v Leicestershire County Council, ex p Sellers and Petty EA* [1999] Env LR 73; *R v Leicestershire County Council, ex p Blackfordby* [2001] Env LR 2; *Derbyshire Waste Ltd v Blewett* [2004] EWCA Civ 1508, [2005] JPL 620, [2005] Env LR 15; *R (on the application of Horner) v Lancashire County Council* [2005] EWHC 2273 (Admin), [2006] Env LR 14, [2006] JPL 664. See also Case C-188/08: *EC Commission v Ireland* [2009] All ER (D) 129 (Nov), ECJ (by failing fully and correctly to transpose into its domestic legislation the requirements of Directive 75/442 arts 4 and 8 Ireland had failed to fulfil its obligations under that Directive).

5 See EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 5 (as substituted: see note 1).

6 ie the competent authority or authorities established or designated under EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 6 (as substituted: see note 1).

7 See EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 7 (as substituted: see note 1).

8 See EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) arts 9, 10 (as substituted: see note 1). See also Annexes IIA, IIB (as added: see note 1). As to exemptions see art 11 (as so substituted). As to the distinction between disposal and recovery operations see Joined Cases C-307/00 to C-311/00: *Oliefhandel Koeweit BV v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer* [2003] ECR I-1821, [2003] 2 CMLR 273, ECJ.

9 See EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 12 (as substituted: see note 1).

10 See EEC Council Directive 91/689 (OJ L337, 31.12.91, p 20) on hazardous waste (the 'Hazardous Waste Directive') (amended by EC Council Directive 94/31 (OJ L168, 2.7.94, p 28)). As to what constitutes hazardous waste see EEC Council Directive 91/689 (OJ L337, 31.12.91, p 20) art 1, Annexes I, II, III. EEC Council Directive 91/689 is replaced with effect from 12 December 2010 by European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3) on waste and repealing certain Directives. For the purposes of implementation in the United Kingdom the Hazardous Waste (England and Wales) Regulations 2005, SI

2005/894, and the Hazardous Waste (Wales) Regulations 2005, SI 2005/1806, were made: see PARA 620 et seq. See also PARA 705. There is special provision relating to the shipment of radioactive waste: see PARA 51.

11 See European Parliament and EC Council Directive 2000/53 (OJ L 269, 21.10.2000, p 34) on end-of-life vehicles (amended by European Parliament and EC Council Directive 2008/33 (OJ L81, 20.3.2008, p 62); and European Parliament and EC Council Directive 2008/112 (OJ L345, 23.12.2008, p 68)). For the purposes of implementation in the United Kingdom the End-of-Life Vehicles Regulations 2003, SI 2003/2635, were made: see PARA 651. See also PARA 39 in regard to packaging Directives. See also the European Commission's *Communication on Integrated Product Policy* (COM (2003) 302 final).

12 See European Parliament and EC Council Directive 2002/95 (OJ L37, 13.3.2003, p 19) on the restriction of the use of certain hazardous substances in electrical and electronic equipment (amended by European Parliament and EC Council Decision 2005/618 (OJ L214, 19.8.2005, p 65); European Commission Decision 2005/717 (OJ L271, 15.10.2005, p 48); European Commission Decision 2005/747 (OJ L280, 25.10.2005, p 18); European Commission Decision 2006/310 (OJ L115, 28.4.2006, p 38); and European Parliament and EC Council Directive 2008/35 (OJ L81, 20.3.2008, p 67)); and European Parliament and EC Council Directive 2002/96 (OJ L37, 13.2.2003, p 24) on waste electrical and electronic equipment (amended by European Parliament and EC Council Directive 2003/108 (OJ L345, 31.12.2003, p 106); European Parliament and EC Council Directive 2008/108 (OJ L81, 20.3.2008, p 65); and European Parliament and EC Council Directive 2008/112 (OJ L345, 23.12.2008, p 68)). As to the meaning of 'waste electrical and electronic equipment' see Directive 2002/96 art 3. See the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894; the Hazardous Waste (Wales) Regulations 2005, SI 2005/1806; and PARA 705. For the purposes of implementation in the United Kingdom of European Parliament and EC Council Directive 2002/95 (OJ L37, 13.3.2003, p 19) the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008, SI 2008/37 (amended by SI 2009/581) were made. See also PARA 39. For the purposes of implementation of European Parliament and EC Council Directive 2002/96 the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, were made: see PARA 652.

13 As to integrated pollution prevention and control see PARA 6. See also PARA 158 et seq.

UPDATE

33 Introduction

TEXT AND NOTES--See also Provision of Services Regulations 2009, SI 2009/2999; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 385A.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/1. LEGISLATION/(2) EUROPEAN UNION LEGISLATION/(vii) Waste Management/B. SPECIFIC TYPES OF WASTE/34. Waste oils.

B. SPECIFIC TYPES OF WASTE

34. Waste oils.

There is specific provision in European Union legislation relating to the disposal of waste oils¹. Member states must take the necessary measures to ensure that waste oils are collected and disposed of without causing any avoidable damage to man and the environment². Priority must be given the processing of waste oils by regeneration³. Where waste oils are not regenerated, measures necessary to ensure that any combustion of waste oils is carried out under environmentally acceptable conditions must be taken, provided that such combustion is technically, economically and organisationally feasible⁴. Where waste oils are neither regenerated nor burned, measures necessary to ensure their safe destruction or their controlled storage or tipping must be taken⁵. Necessary measures must be taken to ensure the prohibition of: (1) any discharge of waste oils into inland surface water, ground water, territorial sea water and drainage systems; (2) any deposit or discharge of waste oils harmful to the soil and any uncontrolled discharge of residues resulting from the processing of waste oils; and (3) any processing of waste oils causing air pollution which exceeds existing prescribed levels⁶. Any undertaking which collects waste oils must be registered and adequately supervised⁷, and any undertaking which disposes of waste oils must obtain a permit⁸. In general, permits may be granted to undertakings which regenerate waste oils or use waste oils as fuel only where all appropriate environmental and health protection measures have been taken, including use of the best technology available where the cost is not excessive⁹.

1 See EEC Council Directive 75/439 (OJ L194, 25.7.75, p 23) on the disposal of waste oils (amended by EEC Council Directive 87/101 (OJ L42, 12.2.87, p 43); and EEC Council Directive 91/692 (OJ L377, 31.12.91, p 48)). EEC Council Directive 75/439 is replaced with effect from 12 December 2010 by European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3) on waste and repealing certain Directives. For the purposes of implementation in the United Kingdom the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (replacing the Waste Management Licensing Regulations 1994, SI 1994/1056), the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, and the Hazardous Waste (Wales) Regulations 2005, SI 2005/1806, were made: see PARA 620 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2.

2 See EEC Council Directive 75/439 (OJ L194, 25.7.75, p 23) art 2 (as substituted: see note 1). See also European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3); and note 1.

3 See EEC Council Directive 75/439 (OJ L194, 25.7.75, p 23) art 3 (as substituted: see note 1). See also European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3); and note 1. See also Case C-102/97: *EC Commission v Germany* [1999] ECR I-5051, [1999] 3 CMLR 631, ECJ; Case C-15/03: *EC Commission v Austria* [2005] ECR I-837, [2005] All ER (D) 256 (Jan), ECJ; Case C-92/03: *EC Commission v Portugal* [2005] ECR I-867, [2005] All ER (D) 268 (Jan), ECJ. As to regeneration see EEC Council Directive 75/439 (OJ L194, 25.7.75, p 23) art 7 (as added: see note 1).

4 See EEC Council Directive 75/439 (OJ L194, 25.7.75, p 23) art 3 (as substituted: see note 1). See also European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3); and note 1.

5 See EEC Council Directive 75/439 (OJ L194, 25.7.75, p 23) art 3 (as substituted: see note 1). See note 1.

6 See EEC Council Directive 75/439 (OJ L194, 25.7.75, p 23) art 4 (as substituted: see note 1). See also European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3); and note 1.

7 See EEC Council Directive 75/439 (OJ L194, 25.7.75, p 23) art 5 (as substituted: see note 1). See also European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3); and note 1.

8 See EEC Council Directive 75/439 (OJ L194, 25.7.75, p 23) art 6 (as substituted: see note 1). See also European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3); and note 1.

9 See EEC Council Directive 75/439 (OJ L194, 25.7.75, p 23) art 6 (as substituted: see note 1). See also European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3); and note 1.

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35. Polychlorinated biphenyls etc.

There is European Union legislation for the approximation of the laws of the member states on the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and the disposal of used PCBs in order to eliminate them completely¹. 'PCBs' means polychlorinated biphenyls, polychlorinated terphenyls, monomethyl-tetrachlorodiphenyl methane, monomethyl-dichloro-diphenyl methane, monomethyl-dibromo-diphenyl methane, and any mixture containing more than a certain percentage by weight of any of these substances². 'Equipment containing PCBs' means any equipment containing, or having contained, PCBs which has not been decontaminated; and equipment of a type which may contain PCBs must be treated as if it contains PCBs unless it is reasonable to assume the contrary³.

Member states must take the necessary measures to ensure that used PCBs are disposed of and that PCBs and equipment containing PCBs are decontaminated or disposed of as soon as possible⁴. Inventories of equipment containing PCBs must be kept⁵. Permits⁶ are required for all undertakings engaged in the decontamination or disposal of PCBs, used PCBs or equipment containing PCBs⁷.

1 See EC Council Directive 96/59 (OJ L243, 24.9.96, p 31) on the disposal of polychlorinated biphenyls and polychlorinated terphenyls. For the purposes of implementation in the United Kingdom of Directive 96/59 the Environmental Protection Act 1990 (Extension of Section 140) Regulations 1999, SI 1999/396, were made, as were the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000, SI 2000/1043 (see also PARA 790). As to the meaning of 'United Kingdom' see PARA 1 note 2. See PARA 62.

See also European Parliament and EC Council Regulation 1907/2006 (OJ L396 30.12.2006 p 1; corrected version in OJ L136, 29.5.2007, p 3) concerning the registration, evaluation, authorisation and restriction of chemicals ('REACH') (amended by EC Commission Regulation 987/2008 (OJ L268, 9.10.2008, p 14); European Parliament and EC Council Regulation 1272/2008 (OJ L353, 31.12.2008, p 1); and EC Commission Regulation 134/2009 (OJ L46, 17.2.2009, p 3)) which repealed from June 2009 EEC Council Directive 76/769 (OJ L262, 27.9.76, p 201) on the approximation of the laws, regulations and administrative provisions of the member states relating to restrictions on the marketing and use of certain dangerous substances and preparations. An obligation under Regulation 1907/2006 which requires a competent authority to do anything in relation to the United Kingdom as a whole must be complied with, in relation to England and Wales, by the Secretary of State and the Welsh Ministers: REACH (appointment of Competent Authorities) Regulations 2007, SI 2007/1742; and as to the enforcement of Regulation 1907/2006 see the REACH Enforcement Regulations 2008, SI 2008/2852; and PARAS 338, 790. See also European Parliament and EC Council Directive 2006/121 (OJ L396, 30.12.2006, p 795) amending Directive 67/548 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances in order to adapt it to Regulation 1907/2006 concerning the Registration, Evaluation and Restriction on Chemicals (REACH) and establishing a European Chemicals Agency; and the Chemicals (Hazardous Information and Packaging for Supply) Regulations 2009, SI 2009/716. See generally **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARAS 571, 574 et seq.

2 See EC Council Directive 96/59 (OJ L243, 24.9.96, p 31) art 2.

3 See EC Council Directive 96/59 (OJ L243, 24.9.96, p 31) art 2.

4 See EC Council Directive 96/59 (OJ L243, 24.9.96, p 31) art 3. As to disposal by incineration see arts 7, 8; and PARAS 41-42.

5 See EC Council Directive 96/59 (OJ L243, 24.9.96, p 31) art 4.

6 le permits obtained in accordance with EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 9: see
PARA 33.

7 See EC Council Directive 96/59 (OJ L243, 24.9.96, p 31) art 8.

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36. Use of sewage sludge in agriculture.

There is particular European Union legislation in relation to the use of sewage sludge in agriculture¹. The purpose of this legislation is to regulate of the use of sewage sludge in agriculture in such a way as to prevent harmful effects on soil, vegetation, animals and man, thereby encouraging the correct use of such sludge². Member states must prohibit the use of sludge when the concentration of heavy metals in the soil exceeds stated limit values³.

1 See EEC Council Directive 86/278 (OJ L181, 4.7.86, p 6) on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (amended by EEC Council Directive 91/692 (OJ L377, 31.12.91, p 48)). For the purposes of implementation in the United Kingdom the Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, were made: see PARA 1072; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 969 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2.

Disposal of sludge at sea is prohibited: see EEC Council Directive 91/271 (OJ L135, 30.5.91, p 40) concerning urban waste water treatment (amended by EC Commission Directive 98/15 (OJ L67, 7.3.98, p 29)). See Case C-416/02: *EC Commission v Spain* [2005] ECR I-7487, [2005] All ER (D) 65 (Sep), ECJ (certain sludge from manure/slurry/sewage not waste when spread on land).

2 See EEC Council Directive 86/278 (OJ L181, 4.7.86, p 6) art 1.

3 See EEC Council Directive 86/278 (OJ L181, 4.7.86, p 6) art 5.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/1. LEGISLATION/(2) EUROPEAN UNION LEGISLATION/(vii) Waste Management/B. SPECIFIC TYPES OF WASTE/37. Batteries and accumulators.

37. Batteries and accumulators.

There is European Union legislation relating to the recovery and controlled disposal of spent batteries and accumulators containing certain amounts of mercury, cadmium or lead¹.

1 European Parliament and EC Council Directive 2006/66 (OJ L266 26.9.2006 p 1) on batteries and accumulators and waste batteries and accumulators (amended by European Parliament and EC Council Directive 2008/12 (OJ L76, 19.3.2008, p 39); and European Parliament and EC Council Directive 2008/103 (OJ L327, 5.12.2008, p 7)) which repeals and replaces EEC Council Directive 91/157 (OJ L78, 26.3.91, p 38) on batteries and accumulators containing certain dangerous substances. See also EC Commission Decision 2008/763 (OJ L262, 1.10.2008, p 39). For the purposes of implementing Directive 2006/66 in the United Kingdom the Batteries and Accumulators (Placing on the Market) Regulations 2008, SI 2008/2164, and the Waste Batteries and Accumulators Regulations 2009, SI 2009/890 (amended by SI 2009/3381) were made: see **SALE OF GOODS AND SUPPLY OF SERVICES**. As to the meaning of 'United Kingdom' see PARA 1 note 2.

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38. Titanium dioxide waste.

There is European Union legislation providing for the prevention and progressive reduction, with a view to its elimination, of pollution caused by waste from the titanium dioxide industry¹. Titanium dioxide is a white pigment used in paints and for other purposes. Member states must take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment² and must take appropriate measures to encourage the prevention, recycling and processing of waste, the extraction of raw materials, and any other process for the re-use of waste³. Discharge, dumping, storage, tipping and injection of waste are prohibited without prior authorisation⁴ and are subject to monitoring⁵. There is provision for the drawing up of programmes for the progressive reduction and eventual elimination of pollution caused by waste from existing industrial establishments⁶, and restrictions in relation to new industrial establishments⁷. There is also provision for surveillance and monitoring of the environment⁸.

1 See EEC Council Directive 78/176 (OJ L54, 25.2.78, p 19) on waste from the titanium dioxide industry (amended by EEC Council Directive 82/883 (OJ L378, 31.12.82, p 1); EEC Council Directive 83/29 (OJ L32, 3.2.83, p 28); and EEC Council Directive 91/692 (OJ L377, 31.12.91, p 48)). See also EEC Council Directive 92/112 (OJ L409, 31.12.92, p 11) on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry. In the United Kingdom the manufacture of titanium dioxide is a prescribed process under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) and subject to integrated pollution control: see PARA 158 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2.

2 See EEC Council Directive 78/176 (OJ L54, 25.2.78, p 19) art 2.

3 See EEC Council Directive 78/176 (OJ L54, 25.2.78, p 19) art 3.

4 See EEC Council Directive 78/176 (OJ L54, 25.2.78, p 19) art 4.

5 See EEC Council Directive 78/176 (OJ L54, 25.2.78, p 19) art 7, Annex II.

6 See EEC Council Directive 78/176 (OJ L54, 25.2.78, p 19) art 9.

7 See EEC Council Directive 78/176 (OJ L54, 25.2.78, p 19) art 11.

8 See EEC Council Directive 78/176 (OJ L54, 25.2.78, p 19) art 7(3). See also EEC Council Directive 82/883 (OJ L378, 31.12.82, p 1) on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry.

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39. Packaging, packaging waste and related matters.

There is European Union legislation which aims inter alia to harmonise national packaging waste management measures and to prevent or reduce the environmental impact of packaging waste¹. Packaging must comply with essential requirements², and there is provision for re-use, recovery and recycling³. Systems of marking and identifying packaging have been introduced to assist in the management of packaging waste⁴.

There is also EU legislation on end-of-life vehicles⁵, and in regard to waste electrical and electronic equipment and the restriction on the use of hazardous substances⁶.

All this legislation could be considered as part of a group of Directives involving 'producer responsibility'⁷.

1 See European Parliament and EC Council Directive 94/62 (OJ L365, 31.12.94, p 10) on packaging and waste (amended by European Parliament and EC Council Directive 2004/12 (OJ L47, 18.2.2004, p 26); and European Parliament and EC Council Directive 2005/20 (OJ L70, 16.3.2005, p 17)). For the purposes of implementation in the United Kingdom the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, were made: see PARAS 648-650. For the purposes of implementation of Directive 94/62 (OJ L365, 31.12.94, p 10) arts 9, 11 in regard to the essential requirements to be satisfied by packaging the Packaging (Essential Requirements) Regulations 2003, SI 2003/1941, were made: see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 844 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2. Plastic plant pots in which a nursery grows its plants constitute 'packaging' if, at the time the plants are put in the pots, it is intended that they are to be used in the process of sale: *Davies v Hillier Nurseries Ltd* [2001] EWHC 28 (Admin), (2001) Times, 16 February, [2001] All ER (D) 210 (Jan), DC. See also *R (on the application of Valpak Ltd) v Environment Agency* [2002] EWHC 1510 (Admin), [2002] Env LR 36, [2002] All ER (D) 357 (May) (definition of retailer bottles); Case C-341/01: *Plato Plastik Robert Frank GmbH v Caropack Handelsgesellschaft mbH* [2004] ECR I-4883, [2004] 3 CMLR 632, [2005] Env LR 7, ECJ (definition of 'packaging' in regard to plastic carrier bags).

2 See European Parliament and EC Council Directive 94/62 (OJ L365, 31.12.94, p 10) art 9, Annex II. See note 1.

3 See European Parliament and EC Council Directive 94/62 (OJ L365, 31.12.94, p 10) arts 4-7 (arts 4, 6 as substituted and amended: see note 1).

4 See EC Commission Decision 97/129 (OJ L50, 20.2.97, p 28) establishing the identification system for packaging materials; and EC Commission Decision 97/138 (OJ L52, 22.2.97, p 22) establishing the formats relating to the database system.

5 See European Parliament and EC Council Directive 2000/53 (OJ L 269, 21.10.2000, p 34) on end-of-life vehicles (amended by European Parliament and EC Council Directive 2008/112 (OJ L345, 23.12.2008, p 68). For the purposes of implementation in the United Kingdom the End-of-Life Vehicles Regulations 2003, SI 2003/2635, were made: see PARA 651. See also PARA 33.

6 As to waste electrical and electronic equipment and restrictions on the use of hazardous substances see PARA 33.

7 In the context of 'producer responsibility' reference should also be made to other EU waste initiatives: see European Commission *Communication on Integrated Product Policy* (COM (2003) 302 final).

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40. Animal waste.

There is European Union legislation which lays down the animal and public health requirements for animal by-products not intended for humans¹. 'Animal by-products' means entire bodies or parts of animal origin as set out in the legislation².

¹ See European Parliament and EC Council Regulation 1774/2002 (OJ L273, 10.10.2002, p 1) laying down health rules concerning animal by-products not intended for human consumption (amended by EC Commission Regulation 808/2003 (OJ L117, 13.5.2003, p 1); EC Commission Regulation 668/2004 (OJ L112, 19.4.2004, p 1); EC Commission Regulation 668/2004 (OJ L112, 19.4.2004, p 1); EC Commission Regulation 878/2004 (OJ L162, 30.4.2004, p 62); EC Commission Regulation 12/2005 (OJ L5, 7.1.2005, p 3); EC Commission Regulation 79/2005 (OJ L16, 20.1.2005, p 46); EC Commission Regulation 92/2005 (OJ L19, 21.1.2005, p 27); EC Commission Regulation 93/2005 (OJ L19, 21.1.2005, p 34); EC Commission Regulation 92/2005 (OJ L19, 21.1.2005, p 27); EC Commission Regulation 92/2005 (OJ L19, 21.1.2005, p 34); EC Commission Regulation 416/2005 (OJ L66, 12.3.2005, p 10); EC Commission Regulation 181/2006 (OJ L29, 2.2.2006, p 31); EC Commission Regulation 208/2006 (OJ L36, 8.2.2006, p 25); EC Commission Regulation 829/2007 (OJ L191, 21.7.2007, p 1); EC Commission Regulation 1256/2007 (OJ L282, 26.10.2007, p 30); EC Commission Regulation 523/2008 (OJ L153, 12.6.2008, p 23); and EC Commission Regulation 777/2008 (OJ L207, 5.8.2008, p 9)). As to the implementation of European Parliament and EC Council Regulation 1774/2002 (OJ L273, 10.10.2002, p 1) see EC Commission Regulation 811/2003 (OJ L117, 13.5.2003, p 14); EC Commission Decision 2003/322 (OJ L117, 13.5.2003, p 32); EC Commission Decision 2003/324 (OJ L117, 13.5.2003, p 37); and EC Commission Regulation 2007/2006 (OJ L379, 28.12.2006, p 98).

For the purposes of implementation in the United Kingdom the Animal By-Product Regulations 2005, SI 2005/2347, were made: see **ANIMALS**. As to the meaning of 'United Kingdom' see PARA 1 note 2.

² See European Parliament and EC Council Regulation 1774/2002 (OJ L273, 10.10.2002, p 1) art 2.

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C. WASTE DISPOSAL

(A) INCINERATION

41. Municipal waste incineration.

There is European Union legislation for the reduction or prevention of air pollution from existing and new municipal waste incineration plants¹. 'Municipal waste' means domestic refuse, as well as commercial or trade refuse and other waste which, because of its nature or composition, is similar to domestic refuse². The provisions set air emission limit values³ and regulate the permitting, design, equipment and operation of municipal waste incineration plants, based on best available technology⁴. While these provisions cover incineration and co-incineration plants they however do not apply to certain plants treating only the following wastes: vegetable waste from agriculture and forestry, from the food processing industry, certain fibrous vegetable waste, certain wood waste, cork waste, radioactive waste, certain animal carcasses, certain waste from offshore oil and gas exploration; they also do not apply to experimental plants used for research, development and testing to improve the incineration process and treating less than a certain amount of waste each year⁵.

1 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) on the incineration of waste, which covers incineration and co-incineration plants. This Directive repeals both EEC Council Directive 89/369 (OJ L163, 14.6.89, p 32) on the prevention of air pollution from new municipal waste incineration plants and EEC Council Directive 89/429 (OJ L203, 15.7.89, p 50) on the reduction of air pollution from existing municipal waste incineration plants, with effect from 28 December 2005. As to air pollution from industrial installations see PARA 11. For the purposes of implementation of the latter two Directives in the United Kingdom the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) was passed: see PARA 158 et seq. For the purposes of implementing European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) in part in the United Kingdom the Waste Incineration (England and Wales) Regulations 2002, SI 2002/2980, were made, which amongst other things amended the Waste Management Licensing Regulations 1994, SI 1994/1056, and the Pollution Prevention and Control (England and Wales) Regulations 2000, SI 2000/1973, but all these regulations have for the most part been repealed and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARAS 186, 662 et seq. Incinerators in the United Kingdom may be subject to local authority air pollution control instead of the integrated pollution control regime, depending on capacity. As to the meaning of 'United Kingdom' see PARA 1 note 2. See also *R (on the application of Edwards) v Environment Agency* [2008] UKHL 22, [2009] 1 All ER 57, [2008] 1 WLR 1587.

2 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) arts 2, 3. See also EEC Council Directive 89/369 (OJ L163, 14.6.89, p 32) art 1 (repealed); and EEC Council Directive 89/429 (OJ L203, 15.7.89, p 50) art 1 (repealed).

3 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) art 7. See also EEC Council Directive 89/369 (OJ L163, 14.6.89, p 32) art 3 (repealed); and EEC Council Directive 89/429 (OJ L203, 15.7.89, p 50) art 3 (repealed).

4 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) arts 3-6, 8-17. See also EEC Council Directive 89/369 (OJ L163, 14.6.89, p 32) arts 2, 4-9 (repealed); and EEC Council Directive 89/429 (OJ L203, 15.7.89, p 50) arts 2, 4-8 (repealed).

5 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) art 2. See also EEC Council Directive 89/369 (OJ L163, 14.6.89, p 32) art 1 (repealed); and EEC Council Directive 89/429 (OJ L203, 15.7.89, p 50) art 1 (repealed). As to incineration of hazardous waste see PARA 42.

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42. Hazardous waste incineration.

Particular provision is made in European Union legislation for dealing with the incineration of hazardous waste¹. The legislation aims to prevent or, where that is not practicable, to reduce as far as possible negative effects on the environment, and the resulting risks to human health, from hazardous waste incineration².

A permit for hazardous waste incineration may only be granted if the incineration plant is designed, equipped and operated in such a manner that environmental pollution prevention requirements are met³. The provisions set air emission limit values⁴, and detailed compliance monitoring is required⁵.

Waste water discharges from incineration plants are also subject to a permit process, and must be limited as far as possible⁶.

1 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) on the incineration of waste, which covers incineration and co-incineration plants, and hazardous waste (as to the meaning of which see art 3(2)). This Directive repeals EC Council Directive 94/67 (OJ L365, 31.12.94, p 34) on the incineration of hazardous waste, with effect from 28 December 2005. For the purposes of implementation of the latter Directive in the United Kingdom the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) was passed: see PARA 158 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2. For the purposes of implementing European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) in part in the United Kingdom the Waste Incineration (England and Wales) Regulations 2002, SI 2002/2980, were made, which amongst other things amended the Waste Management Licensing Regulations 1994, SI 1994/1056, and the Pollution Prevention and Control (England and Wales) Regulations 2000, SI 2000/1973, but these regulations have been replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARAS 186, 662 et seq. As to the disposal of waste oils see PARA 34; and as to the disposal of animal waste see PARA 40. See also *R (on the application of Edwards) v Environment Agency* [2008] UKHL 22, [2009] 1 All ER 57, [2008] 1 WLR 1587.

2 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) arts 1, 2. See also EC Council Directive 94/67 (OJ L365, 31.12.94, p 34) art 1 (repealed). See also PARA 41.

3 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) art 4. See also EC Council Directive 94/67 (OJ L365, 31.12.94, p 34) art 3 (repealed). As to the environmental pollution prevention requirements see EC Council Directive 94/67 (OJ L365, 31.12.94, p 34) arts 5-12 (repealed).

4 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) art 7. See also EC Council Directive 94/67 (OJ L365, 31.12.94, p 34) art 7 (repealed).

As to the emission of dioxins and furins see EC Commission Decision 97/283 (OJ L113, 30.4.97, p 11) on harmonised measurement methods to determine the mass concentration of dioxins and furans in atmospheric emissions.

5 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) art 10. See also EC Council Directive 94/67 (OJ L365, 31.12.94, p 34) art 11 (repealed).

6 See European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2001, p 91) art 8. See also EC Council Directive 94/67 (OJ L365, 31.12.94, p 34) art 8 (repealed).

As to groundwater see EEC Council Directive 80/68 (OJ L20, 26.1.80, p 43) on the protection of groundwater against pollution caused by certain dangerous substances; PARA 23; and PARA 28.

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(B) LANDFILL

43. Landfill.

There is European Union legislation¹ which aims to prevent or reduce as far as possible negative effects on the environment, as well as any resulting risk to human health, from landfilling of waste². The legislation requires each landfill to be classified as: (1) landfill for hazardous waste; (2) landfill for non-hazardous waste; or (3) landfill for inert waste³. Member states are required to establish national strategies to reduce biodegradable waste for landfill in accordance with timetables for reductions⁴, and must take measures to ensure that certain wastes are not accepted in a landfill⁵. Detailed provision is made for the permitting of landfills and the conditions accompanying a permit⁶. Provision is also made for the control and monitoring of operational landfills⁷, and for closure and after-care procedures⁸. A time limit is set within which existing landfills must be adapted so as to comply with these requirements⁹.

1 See EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) on the landfill of waste. For the purposes of implementation of this Directive in the United Kingdom reference should be made to the pollution control regime for landfills set out in the Landfill (England and Wales) Regulations 2002, SI 2002/1559, which have been repealed and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARAS 186, 662 et seq. See also the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2010, SI 2010/75; and PARA 187. As to the meaning of 'United Kingdom' see PARA 1 note 2.

See also EC Council Decision 2003/33 (OJ L11, 16.1.2003, p 27) on the criteria and procedures for the acceptance of waste at landfills.

As to the implementation of EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) see *Derbyshire Waste Ltd v Blewett* [2004] EWCA Civ 1508, [2005] JPL 620, [2005] Env LR 15. See also *Blackland Park Exploration Ltd v Environment Agency* [2003] EWCA Civ 1795, [2004] Env LR 33, (2004) Times, 2 January, [2003] All ER (D) 249 (Dec) (definition of landfill); *Environment Agency v Hillridge Ltd* [2003] EWHC 3023 (Ch), [2004] Env LR 32 (financial provision); *R (on the application of Lewis) v Environment Agency* [2005] EWHC 1110 (Admin), [2005] All ER (D) 182 (May) (application of EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) and possible overlap with implementation of EEC Council Directive 80/68 (OJ L20, 26.1.80, p 43) on groundwater (see PARA 23)); Case C-6/03: *Deponiezweckverband Eiterkopfe v Land Rheinland-Pfalz* [2005] ECR I-2753, [2005] Env LR 37, ECJ (German rules laying down more stringent rules than required).

2 See EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) art 1.

3 See EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) art 3. 'Landfill' means a waste disposal site for the deposit of waste onto or into land: see art 2.

4 See EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) art 5. Provision has been made for strategies for reducing biodegradable municipal waste for landfill: see the Waste and Emissions Trading Act 2003 Pt 1 Ch 1 (ss 1-28); and PARA 631 et seq.

5 See EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) art 5. See also art 6. As to waste acceptance procedures see art 11. See note 4.

6 See EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) arts 7-9.

7 See EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) art 12.

8 See EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) art 13.

9 See EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) art 14.

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D. TRANSPORT OF WASTE

44. Transport of waste.

There is European Union legislation on the supervision and control of shipments of waste within, into and out of the EU¹. There is separate provision for the supervision and control of shipments of radioactive waste².

There are separate regimes governing shipments between member states³, within member states⁴, exports⁵, imports⁶, and transit shipments⁷. The different requirements depend on whether the waste is destined for recovery or disposal, and whether it is on the green list, the amber list or the red list⁸. Broadly, the amber and red lists consist of hazardous waste and the green list of non-hazardous waste.

1 See European Parliament and EC Council Regulation 1013/2006 (OJ L190 12.7.2006, p 1) (amended by EC Commission Regulation 1379/2007 (OJ L309, 27.11.2007, p 7); EC Commission Regulation 669/2008 (OJ L188, 16.7.2008, p 7); and EC Commission Regulation 308/2009 (OJ L97, 16.4.2009, p 8)) on shipments of waste, which replaces, updates, consolidates and clarifies EEC Council Regulation 259/93 (OJ L30, 6.2.93, p 1) on the supervision and control of shipments of waste within, into and out of the European Community. See also Case C-2/90: *EC Commission v Belgium* [1992] ECR I-4431, [1993] 1 CMLR 365, ECJ; Case 302/86: *EC Commission v Denmark* [1988] ECR 4607, [1989] 1 CMLR 619, ECJ; Case C-116/01: *SITA EcoService Nederland BV v Minister van Volkshuisvesting* [2004] QB 262, [2003] ECR I-2969, ECJ; Case C-411/06 *EC Commission v European Parliament (France intervening)* [2009] All ER (D) 81 (Sep), ECJ. EEC Council Regulation 259/93 (OJ L30, 6.2.93, p 1) was directly applicable in the United Kingdom, but see also the Transfrontier Shipment of Waste Regulations 2007, SI 2007/1711; and PARA 710. As to transport of waste in Great Britain generally see PARA 709 et seq. As to the meanings of 'United Kingdom' and 'Great Britain' see PARA 1 note 2.

2 See Euratom Council Directive 2006/117 (OJ L337 5.12.2006 p 21) on the supervision and control of shipments of radioactive waste and spent fuel, which repeals and replaces Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) on the supervision and control of shipments of radioactive waste between member states and into and out of the Community; see PARA 51. Note that Directive 2006/117 covers all shipments of spent fuel whether it is intended for disposal or for reprocessing: recital (6). For the purpose of implementing Euratom Council Directive 2006/117 in the United Kingdom the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulation 2008, SI 2008/3087, were made.

3 See European Parliament and EC Council Regulation 1013/2006 (OJ L190 12.7.2006, p 1) arts 3-32. As to the operation of the previous Regulation (ie EEC Council Regulation 259/93 (OJ L30, 6.2.93, p 1)) see Case C-6/00: *Abfall Service AG (ASA) v Bundesminister für Umwelt, Jugend und Familie* [2002] ECR I-1961, [2002] 1 CMLR 1603, ECJ. See also Case C-472/02: *Siomab SA v Institut Bruxellois por la gestion de l'environnement* [2004] ECR I-9971, [2005] Env LR D2 (notification requirements); Case C-277/02: *EU-Wood-Trading GmbH v Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH* [2005] All ER (EC) 967, [2004] ECR I-11957, ECJ (objection to shipment of wood waste based not on its transport but on the basis that the recovery operation could not be carried out in the destination member state without endangering human health and environment); Case C-113/02: *EC Commission v Netherlands* [2004] ECR I-9707, [2005] Env LR 22, ECJ (flawed criteria in national implementing rules concerning shipment of waste for recovery).

4 See European Parliament and EC Council Regulation 1013/2006 (OJ L190 12.7.2006, p 1) art 33.

5 See European Parliament and EC Council Regulation 1013/2006 (OJ L190 12.7.2006, p 1) arts 34-40.

6 See European Parliament and EC Council Regulation 1013/2006 (OJ L190 12.7.2006, p 1) arts 41-46.

7 See European Parliament and EC Council Regulation 1013/2006 (OJ L190 12.7.2006, p 1) arts 47, 48.

8 As to waste lists see European Parliament and EC Council Regulation 1013/2006 (OJ L190 12.7.2006, p 1) Annexes III (green), IV (amber), V (waste subject to export prohibition in art 36). As to unsorted green list waste see *R v Environment Agency, ex p Dockgrange* [1997] Env LR 575.

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(viii) Control of Hazardous Substances

45. Control of major accident hazards.

There is European Union legislation¹ aimed at the prevention of major accidents which involve dangerous substances², and the limitation of their consequences for man and the environment³.

These provisions strengthen the safety management and the emergency planning requirements imposed on operators of certain industrial plants⁴. The operator of such an establishment must notify the competent authority of specified information relating to the establishment⁵, and must draw up and properly implement a major accident prevention policy⁶. Installations located close to each other must co-operate in averting risks and preventing domino effects, such as a fire at one installation spreading to others⁷. Safety reports and emergency plans are also required⁸. There are provisions requiring the exchange of information, the giving of information on safety measures, and the giving of certain information following a major accident⁹. Competent authorities must organise a system of inspections, or other measures of control appropriate to the type of establishment concerned¹⁰. Member states must prohibit the use of installations where the prevention and mitigation measures taken by the operator are seriously deficient or where the operator does not submit the required information to the competent authority within the specified period¹¹.

1 See EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) on the control of major accident hazards involving dangerous substances (amended by European Parliament and EC Council Directive 2003/105 (OJ L345, 31.12.2003, p 106)). See also European Parliament and EC Council Directive 2006/21 (OJ L102 11.4.2006 p 15) on the management of waste from extractive industries and amending Directive 2004/35. For the purposes of implementation in the United Kingdom the Control of Major Accident Hazards Regulations 1999, SI 1999/743, and the Planning (Control of Major Accident-Hazards) Regulations 1999, SI 1999/981, were made: see PARA 788; and **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 662 et seq; **TOWN AND COUNTRY PLANNING**. See also the Planning (Hazardous Substances) Act 1990; the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1210 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2.

See Case C-190/90: *EC Commission v Netherlands* [1992] ECR I-3265, ECJ (authorised persons); Case C-336/97: *EC Commission v Italy* [1999] ECR I-3771, ECJ (establishing authorities).

2 As to the meaning of 'dangerous substances' see EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) art 3, Annex 1 (as amended: see note 1).

3 See EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) arts 1, 5.

4 As to the scope of the Directive see EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) art 2. The Directive does not apply to the following: (1) military establishments, installations or storage facilities; (2) hazards created by ionising radiation; (3) the transport of dangerous substances and intermediate temporary storage by road, rail, internal waterways, sea or air, outside the establishments covered by the Directive, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards; (4) the transport of dangerous substances in pipelines, including pumping stations, outside establishments covered by the Directive; (5) the exploitation (ie exploration, extraction and processing) of minerals in mines, quarries, or by means of boreholes, with the exception of chemical and thermal processing operations and storage related to those operations which involve dangerous substances, as defined (see note 2); (6) the offshore exploration and exploitation of minerals, including hydrocarbons; (7) waste landfill sites, with the exception of operational tailings disposal facilities, including tailing ponds or dams, containing dangerous substances as defined, in particular when used in connection with the chemical and thermal processing of minerals: see art 4 (as amended: see note 1).

- 5 See EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) art 6 (as amended: see note 1). As to the setting up or appointment of competent authorities see art 16.
- 6 See EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) art 7 (as amended: see note 1).
- 7 See EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) art 8 (as amended: see note 1).
- 8 See EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) arts 8, 9, 11 (as amended: see note 1). See the Major Accident Off-site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009, SI 2009/1927; and **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 665.
- 9 See EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) arts 13-15, 19 (arts 13, 19 as amended: see note 1).
- 10 See EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) art 18.
- 11 See EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) art 17.

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46. Genetically modified organisms.

There is European Union legislation on the contained use of genetically modified micro-organisms, the purpose of which is to provide common rules throughout the EU for the use of genetically modified micro-organisms both in research laboratories and in industrial facilities and to provide appropriate measures to protect human health and the environment from any risks arising from such use¹. The provisions include containment and control measures, and provide for a system of assessment and risk management.

There is also legislation for protection of human health and the environment on the deliberate release into the environment of genetically modified organisms². The provisions cover carrying out the deliberate release of genetically modified organisms into the environment for any other purposes than placing on the market within the Community and placing on the market such organisms as or in products within the Community³. Under these provisions there are various exemptions⁴ and a number of general obligations⁵. There are different authorisation procedures and consent requirements depending on whether there is deliberate release of genetically modified organisms for any other purpose than for placing on the market⁶, or there is placing on the market of such organisms as or in products⁷.

1 See EEC Council Directive 90/219 (OJ L117, 8.5.90, p 1) on the contained use of genetically modified micro-organisms (amended by EC Council Directive 98/81 (OJ L330, 5.12.98, p 13); and supplemented by EC Council Decision 2001/204 (OJ L73, 15.3.2001, p 32)). See also EEC Commission Decision 91/448 (OJ L239, 28.8.91, p 23) concerning the guidelines for classification (amended by EC Commission Decision 96/134 (OJ L31, 9.2.96, p 25)). For the purposes of implementation in the United Kingdom the Environmental Protection Act 1990 Pt VI (ss 106-127) was passed, and the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, were made: see PARA 813 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2.

See Case C-6/99: *Association Greenpeace France v Ministère de l'Agriculture et de la Pêche* [2001] All ER (EC) 791, [2000] ECR I-1651, ECJ (procedure for authorising genetically modified organisms); and Case C-132/03: *Ministero della Salute v Coordinamento delle Associazioni per la Difesa dell'Ambiente e dei Terzi Degli Utenti e dei Consumatori (Codacons)* [2005] ECR I-4167, [2006] Env LR 5 (exception in regard to foodstuffs intended for nutritional use for young children).

2 See European Parliament and EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1) on the deliberate release into the environment of genetically modified organisms and repealing Directive 90/220 (supplemented by EC Commission Decision 2002/623 (OJ L200, 30.7.2002, p 22); EC Council Decision 2002/811 (OJ L 280, 18.10.2002, p 27); EC Council Decision 2002/812 (OJ L 280, 18.10.2002, p 37); EC Council Decision 2002/813 (OJ L280, 18.10.2002, p 62); EC Commission Decision 2003/701 (OJ L254, 8.10.2003, p 21); and amended by European Parliament and EC Council Regulation 1830/2003 (OJ L268, 18.10.2003, p 24); and European Parliament and EC Council Directive 2008/27 (OJ L81, 20.3.2008, p 45)). For the purposes of implementing in the United Kingdom of European Parliament and EC Council Regulation 1830/2003 (OJ L268, 18.10.2003, p 24) the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412, and the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914, were made: see PARA 792. See also the Environmental Protection Act 1990 Pt VI; the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443 (amended by SI 2004/2411); and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188 (amended by SI 2005/1913). See further PARA 793 et seq. See also note 1.

3 See European Parliament and EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1) art 1.

4 See European Parliament and EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1) art 3.

5 See European Parliament and EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1) art 4.

6 See European Parliament and EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1) Pt B (arts 5-11). See Joined Cases C-439/05 and C-454/05: *Land Oberösterreich v EC Commission* [2008] All ER (EC) 935, [2007] ECR I-7141, ECJ (as to deliberate release into the environment of genetically modified organisms, national provisions derogating from a harmonisation measure justified by new scientific evidence and by a problem specific to one member state); Case C-552/07: *Commune de Sausheim v Azelvandre* [2009] All ER (EC) 1028, ECJ (as to deliberate release of genetically modified organisms, confidentiality and location of the release).

7 See European Parliament and EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1) Pt C (arts 12-24). See Case C-165/08: *EC Commission v Poland* (16 July 2009, unreported), ECJ (by prohibiting the free circulation of genetically modified seed varieties and the inclusion of genetically modified varieties in the national catalogue of varieties, the Republic of Poland failed to fulfil its obligations under Directive 2001/18, arts 22, 23).

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47. Asbestos.

European Union legislation on the prevention and reduction of environmental pollution by asbestos integrates controls on emissions to air, water and land¹.

A general duty is placed on member states to ensure that asbestos emissions into the air, asbestos discharges into water, and solid asbestos waste are, as far as reasonably practicable, reduced at source and prevented². In the case of the use of asbestos, the measures taken should entail using the best available technology not entailing excessive cost, including where appropriate recycling or treatment³. A limit value for air emissions is set⁴. Aqueous effluents from asbestos cement and paper and board manufacture must generally be recycled⁵. Member states must ensure that work with asbestos products and the demolition of buildings do not cause significant environmental pollution by asbestos fibres or dust⁶. Measures must be taken to ensure that, in the course of transport and deposition of waste, no asbestos fibres or dust are released into the air and no liquids containing asbestos fibres are spilled⁷. Where waste containing asbestos fibres or dust is landfilled, it must be treated, packaged or covered so that the release of asbestos particles into the environment is prevented⁸.

Provision is made for the monitoring of emissions into the air and of discharges of aqueous effluent⁹.

1 See EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) on the prevention and reduction of environmental pollution by asbestos (amended by EEC Council Directive 91/692 (OJ L377, 31.12.91, p 48); and by EC Council Regulation 807/203 (OJ L122, 16.5.2003, p 36)). See **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 630 et seq.

2 See EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) art 3(1).

3 See EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) art 3(1), (2).

4 See EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) art 4.

5 See EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) art 5.

6 See EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) art 7.

7 See EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) art 8.

8 See EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) art 8.

9 See EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) art 6.

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48. Storage and distribution of petrol.

The major air pollutants arising from the handling of petrol are volatile organic compounds¹. European Union legislation² requires measures to be taken to control volatile organic compound emissions resulting from the storage of petrol³ and from its distribution and loading into storage installations at service stations⁴.

1 As to the control of volatile organic compounds generally see PARA 12.

2 See European Parliament and EC Council Directive 94/63 (OJ L365, 31.12.94, p 24) on the control of volatile organic compound emissions resulting from the storage of petrol and its distribution from terminals to service stations. For the purposes of implementation in the United Kingdom eg the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, were made. See further **CARRIAGE AND CARRIERS; RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES; ROAD TRAFFIC**. As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 See European Parliament and EC Council Directive 94/63 (OJ L365, 31.12.94, p 24) art 3, Annex I.

4 See European Parliament and EC Council Directive 94/63 (OJ L365, 31.12.94, p 24) arts 4-6.

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49. Fuel.

There are European Union provisions setting technical specifications for fuel used in positive ignition and compression ignition engines in order to improve fuel quality and reduce emissions¹. Member states must prohibit the marketing of leaded petrol², and diesel fuel may only be marketed in member states if it complies with certain environmental specifications³. If, as a result of exceptional events, a sudden change in the supply of crude oils or petroleum products renders it difficult to comply with these requirements, higher limit values may be temporarily authorised⁴. Compliance monitoring and reporting obligations are imposed on member states⁵.

There are also provisions limiting the sulphur content of gas oils marketed in the EU⁶. Gas oils include diesel and light fuel oil used for self-propelling vehicles, heating, and industrial and marine uses⁷.

1 See European Parliament and EC Council Directive 98/70 (OJ L350, 28.12.98, p 58) relating to the quality of petrol and diesel fuels (amended by European Parliament and EC Council Directive 2003/17 (OJ L76, 22.3.2003, p 10); and European Parliament and EC Council Directive 2009/13 (OJ L140, 5.6.2009, p 88)). For the purposes of implementation in the United Kingdom the Motor Fuels (Composition and Content) Regulations 1999, SI 1999/3107, were made: see PARA 14. As to the meaning of 'United Kingdom' see PARA 1 note 2.

2 See European Parliament and EC Council Directive 98/70 (OJ L350, 28.12.98, p 58) art 3 (as amended: see note 1).

3 See European Parliament and EC Council Directive 98/70 (OJ L350, 28.12.98, p 58) art 4 (as amended: see note 1), Annexes II, IV.

4 See European Parliament and EC Council Directive 98/70 (OJ L350, 28.12.98, p 58) art 7.

5 See European Parliament and EC Council Directive 98/70 (OJ L350, 28.12.98, p 58) art 8 (as amended: see note 1). See also EC Commission Decision 2002/159 (OJ L53, 23.2.2002, p 30) on a common format for submission of summaries of national fuel quality data.

6 See EEC Council Directive 93/12 (OJ L74, 27.3.93, p 81) relating to the sulphur content of certain liquid fluids (amended by European Parliament and EC Council Directive 98/70 (OJ L350, 28.12.98, p 58); EC Council Directive 99/32 (OJ L121, 11.5.99, p 13); and European Parliament and EC Council Directive 2009/30 (OJ L140, 5.6.2009, p 88)). For the purposes of implementation in the United Kingdom the Motor Fuel (Composition and Content) Regulations 1999, SI 1999/3107 (amended by SI 2001/3896; SI 2003/3078), and the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007, SI 2007/79, were made. See **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 788.

7 See EEC Council Directive 93/12 (OJ L74, 27.3.93, p 81); and note 6.

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(ix) Radiation Pollution

50. Basic safety standards and radiological emergency.

European Union legislation has laid down basic standards for the protection of the health of workers and the general public against dangers from ionising radiation¹. The provisions set out maximum permissible doses of radiation², and include measures to prevent exposure and procedures for measuring exposure. There are also provisions relating to health surveillance.

Provision is made for the early exchange of information in the event of a radiological emergency³. Further provisions⁴ require member states to provide prior information to the public likely to be affected by a radiological emergency⁵. When a radiological emergency occurs, the public actually affected must be informed without delay of the facts of the emergency, of the steps to be taken, and of the applicable health-protection measures⁶. Information provided to the public under these provisions is in addition to any information required to be given under the major accidents hazards legislation⁷.

There is also EU legislation laying down maximum permitted levels of radioactive contamination for foodstuffs and feedingstuffs which may be placed on the market following a nuclear accident or radiological emergency⁸.

1 See Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1) laying down the revised basic safety standards for the health protection of the general public and workers against the dangers of ionising radiation; and Euratom Council Directive 90/461 (OJ L349, 13.12.90, p 21) on the operational protection of outside workers exposed to the risk of ionising radiation during their activities in controlled areas. For the purpose of implementing Euratom Council Directive 96/29 in the United Kingdom the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulation 2008, SI 2008/3087, were made. See also the Treaty establishing the European Atomic Energy Community (Euratom Treaty) (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179). Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1) repealed EAEC Council Directive 59/221 (OJ L11, 20.2.59, p 221) laying down the basic standards for the protection of the health of workers and the general public against the dangers arising from ionising radiations (amended by EAEC Council Directive 62/1633 (OJ L57, 9.7.62, p 1633); Euratom Council Directive 66/45 (OJ L216, 26.11.66, p 3693)); and Euratom Council Directive 76/579 (OJ L187, 12.7.76, p 1) laying down the revised basic safety standards for the health protection of the general public and workers against the dangers of ionising radiation (amended by Euratom Council Directive 79/343 (OJ L83, 3.4.79, p 18); Euratom Council Directive 80/836 (OJ L246, 17.9.80, p 1); and Euratom Council Directive 84/467 (OJ L265, 5.10.84, p 4)), with effect from 13 May 2000. See also Euratom Council Directive 2003/122 (OJ L346, 31.12.2003, p 57) on the control of high-activity sealed radioactive sources and orphan sources. For the purposes of implementation in the United Kingdom the Radioactive Substances Act 1993 was passed: see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1357 et seq. The Nuclear Installations Act 1965 governs site licensing and inspection of major nuclear facilities: see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1487 et seq. See also the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769; and **HEALTH AND SAFETY AT WORK**. As to the meaning of 'United Kingdom' see PARA 1 note 2.

2 Dose limits must be justified by the advantages they produce (the 'optimisation principle'). The Radioactive Substances Act 1993 must be read in the light of the optimisation principle: *R v Secretary of State for the Environment, ex p Greenpeace* [1994] 4 All ER 352, [1994] 3 CMLR 737, DC.

3 See Euratom Council Decision 87/600 (OJ L371, 30.12.87, p 76) on Community arrangements for the early exchange of information in the event of a radiological emergency.

4 See Euratom Council Directive 89/618 (OJ L357, 7.12.89, p 31) on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency.

See *R (on the application of Friends of the Earth Ltd) v Secretary of State for the Environment, Food and Rural Affairs* [2001] EWCA Civ 1847, [2002] 1 CMLR 21, [2002] Env LR 24; Case C-177/03: *EC Commission v France* [2004] ECR I-11671, [2004] All ER (D) 164 (Dec), ECJ; Case C-65/04: *EC Commission v United Kingdom* [2006] ECR I-2239, [2006] All ER (D) 152 (Mar), ECJ.

5 See Euratom Council Directive 89/618 (OJ L357, 7.12.89, p 31) art 5.

6 See Euratom Council Directive 89/618 (OJ L357, 7.12.89, p 31) art 6.

7 See EC Council Directive 96/82 (OJ L10, 14.1.97, p 13) on the control of major accident hazards involving dangerous substances: see PARA 45.

8 See Euratom Council Regulation 3954/87 (OJ L371, 13.12.87, p 11) laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (amended by Euratom Commission Regulation 944/89 (OJ L101, 13.4.89, p 17); Euratom Council Regulation 2218/89 (OJ L211, 22.7.89, p 1); and Euratom Commission Regulation 770/90 (OJ L83, 30.3.90, p 78)). See also EC Council Regulation 733/2008 (OJ L201, 20.7.2008, p 1) on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station (Codified version). As to United Kingdom legislation relating to contamination of food generally see **FOOD**.

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51. Transport of radioactive substances and waste.

In pursuance of the basic safety standards¹, a European Union regime has been set up controlling shipments of radioactive substances between member states². There are separate provisions regulating the supervision and shipment of radioactive wastes³.

1 See PARA 50.

2 See Euratom Council Regulation 1493/93 (OJ L148, 19.6.93, p 1) on shipments of radioactive substances between member states. See also **FUEL AND ENERGY**.

3 See now Euratom Council Directive 2006/117 (OJ L337 5.12.2006 p 21) on the supervision and control of shipments of radioactive waste and spent fuel. Note that the Directive will cover all shipments of spent fuel whether it is intended for disposal or for reprocessing: see recital (6). For the purpose of implementing Euratom Council Directive 2006/117 in the United Kingdom the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulation 2008, SI 2008/3087, were made. As to the transport of waste generally under European law see PARA 44. As to United Kingdom legislation relating to radioactive waste see PARAS 706-707. As to United Kingdom legislation relating to the transport of waste generally see PARA 709 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2.

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52. Radioactive waste disposal.

Data relating to any plan for the disposal of radioactive waste must be provided to the European Commission¹. The data must make it possible to determine whether the implementation of the plan is liable to result in the contamination of water, soil or the air space of another member state². Authorisation to discharge radioactive materials may not be given until after the Commission has issued an opinion on the relevant plan, which must be issued within six months of receipt of the plan³.

1 See the Treaty establishing the European Atomic Energy Community (Euratom Treaty) (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 37. As to enforcement see art 38. As to United Kingdom legislation relating to radioactive waste see PARAS 706-707. As to the meaning of 'United Kingdom' see PARA 1 note 2.

2 Euratom Treaty art 37.

3 See Case 187/87: *Saarland v Minister for Industry, Post and Telecommunications and Tourism* [1988] ECR 5013, [1989] 1 CMLR 529, ECJ. There is a presumption that the authorisation requirement is restricted to the civil and commercial use of nuclear energy and does not apply to military activities implementing a government defence policy: *R (on the application of Marchiori) v Environment Agency* [2001] EWCA Civ 03, [2002] Eu LR 225, [2002] All ER (D) 220 (Jan).

See also Case C-61/03: *EC Commission v United Kingdom* [2005] ECR I-2477, [2005] All ER (D) 106 (Apr), ECJ (disposal of nuclear military reactor).

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(x) Noise Control

53. Noise control.

European Union legislation on noise control covers a number of different areas¹. There are provisions relating to the permissible sound level and exhaust systems and silencers for certain types of vehicles². There are provisions about noise from the use of equipment outdoors³, and also provisions on aircraft⁴ and household appliances⁵.

¹ As to noise control in the United Kingdom see PARA 817 et seq. As to the meaning of 'United Kingdom' see PARA 1 note 2.

² As to road vehicles see EEC Council Directive 70/157 (OJ L42, 23.2.70, p 16) on the approximation of the laws of the member states relating to the permissible sound level and the exhaust system of motor vehicles (amended by EEC Commission Directive 81/334 (OJ L131, 18.5.81, p 6); EEC Council Directive 84/424 (OJ L238, 6.9.84, p 31); EEC Commission Directive 89/491 (OJ L238, 15.8.89, p 43); EEC Council Directive 92/97 (OJ L371, 19.12.92, p 1); EC Commission Directive 96/20 (OJ L92, 13.4.96, p 23); EC Commission Directive 99/101 (OJ L334, 28.12.99, p 41); and EC Commission Directive 2007/34 (OJ L155, 15.6.2007, p 49)). See also European Parliament and EC Council Directive 97/24 (OJ L226, 18.8.97, p 1) on certain components and characteristics of two or three-wheel motor vehicles (amended by European Parliament and EC Council Directive 2002/51 (OJ L252, 20.9.2002, p 20); EC Commission Directive 2003/77 (OJ L211, 21.8.2003, p 24); EC Commission Directive 2005/30 (OJ L106, 27.4.2005, p 17); EC Commission Directive 2006/27 (OJ L66, 8.3.2006, p 7); EC Commission Directive 2006/72 (OJ L227, 19.8.2006, p 43); and EC Commission Directive 2006/120 (OJ L330, 28.11.2006, p 16)). As to tractors see EEC Council Directive 74/151 (OJ L84, 28.3.74, p 25) on the approximation of the laws of the member states relating to certain parts and characteristics of wheeled agricultural or forestry tractors (amended by EEC Commission Directive 88/410 (OJ L200, 26.7.88, p 27); European Parliament and EC Council Directive 97/54 (OJ L277, 10.10.97, p 24); EC Commission Directive 98/38 (OJ L170, 16.6.98, p 13); and EC Commission Directive 2006/26 (OJ L65, 7.3.2006, p 22)). For the purposes of implementation in the United Kingdom see the Road Traffic Act 1988 and the statutory instruments made under it; and **ROAD TRAFFIC**.

³ See European Parliament and EC Council Directive 2000/14 (OJ L162, 3.7.2000, p 1) on the approximation of the laws of the member states relating to noise emission in the environment by equipment for use outdoors (amended by European Parliament and EC Council Directive 2005/88 (OJ L344, 27.12.2005, p 44)), and for the purposes of implementation in the United Kingdom the Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001, SI 2001/1701 (amended by SI 2001/3958; SI 2005/3525; SI 2007/3224) were made.

See also European Parliament and EC Council Directive 2002/30 (OJ L85, 28.3.2002, p 40) on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at European Community airports.

See further European Parliament and EC Council Directive 2002/49 (OJ L189, 18.7.2002, p 12) relating to the assessment and management of environmental noise, which applies to environmental noise to which humans are exposed, in particular in built-up areas, public parks or other quiet areas in an agglomeration, quiet areas in open country, or near schools, hospitals and other noise-sensitive buildings and areas. For the purposes of implementing Directive 2002/49 the Environmental Noise (England) Regulations 2006, SI 2006/2238 (amended by SI 2008/375; SI 2009/1610; and SI 2010/340), and the Environmental Noise (Wales) Regulations 2006, SI 2006/2629 (amended by SI 2009/47) were made.

As to noise at work see **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 611.

⁴ The requirement for noise certification was previously covered by EEC Council Directive 80/51 (OJ L18, 24.1.80, p 26) on the limitation of noise emissions from subsonic aircraft (amended by EEC Council Directive 83/206 (OJ L117, 4.5.83, p 15)), but this was repealed by European Parliament and EC Council Regulation 1592/2002 (OJ L240, 7.9.2002, p 1) on common rules in the field of civil aviation and establishing a European Aviation Safety Authority (amended by EC Commission Regulation 1701/2003 (OJ L242, 27.9.2003, p 5); and European Parliament and EC Council Regulation 1643/2003 (OJ L245, 29.9.2003, p 7)) which has now been replaced by European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) on common rules in the field of civil aviation and establishing a European Aviation Safety Agency. See also the Convention

on International Civil Aviation (Chicago, 7 December 1944). As to minimum requirements with the possibility of stricter measures being upheld see eg Case C-389/96: *Aher-Waggon GmbH v Germany* [1998] ECR I-4473, [1999] 2 CMLR 589, ECJ. There are stricter standards for limiting noise emissions from certain civil subsonic jet aeroplanes registered in European Community territory: see EEC Council Directive 89/629 (OJ L363, 13.12.89, p 27) on the limitation of noise emission from civil subsonic jet aeroplanes. For the purposes of implementation in the United Kingdom the Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, were made: see **AIR LAW** vol 2 (2008) PARA 388 et seq.

There are further restrictions on the operation of certain types of civil subsonic jet aeroplanes when operating at airports situated on Community territory: EEC Council Directive 92/14 (OJ L76, 23.3.92, p 21) on the limitation of the operation of certain aeroplanes (amended by EC Council Directive 98/20 (OJ L107, 7.4.98, p 4); and EEC Commission Directive 99/28 (OJ L118, 6.5.99, p 53)). For the purposes of implementation in the United Kingdom the Aeroplane Noise Regulations 1999, SI 1999/1452, were made: see **AIR LAW** vol 2 (2008) PARA 397 et seq.

It should be noted that, in general, EU legislation extends only to the certification and operation of individual aircraft, and does not generally relate to regulating noise levels at airports. However, see eg EEC Council Directive 92/14 (OJ L76, 23.3.92, p 21) art 2(4) (added by EC Council Directive 98/20 (OJ L107, 7.4.98, p 4)); and see *R v Secretary of State for Transport, ex p Richmond upon Thames London Borough Council* [1994] 1 All ER 577, [1994] 1 WLR 74; *R v Secretary of State for Transport, ex p Richmond upon Thames London Borough Council (No 2)* [1995] Env LR 390, (1994) Times, 29 December; *R v Secretary of State for Transport, ex p Richmond upon Thames London Borough Council (No 3)* [1995] Env LR 409, (1995) Times, 11 May; *R v Secretary of State for Transport, ex p Richmond upon Thames London Borough Council (No 4)* [1996] 4 All ER 93, [1996] 1 WLR 1005.

5 See now European Parliament and EC Council Directive 2005/32 (OJ L191, 22.7.2005, p 29) establishing a framework for the setting of ecodesign requirements for energy-using products (amended by EEC Council Directive 92/42 (OJ L167, 22.6.92, p 17); European Parliament and EC Council Directive 96/57 (OJ L236, 18.9.96, p 36); European Parliament and EC Council Directive 2000/55 (OJ L279, 1.11. 2000, p 33); and European Parliament and EC Council Directive 2008/28 (OJ L81, 20.3.2008, p 48)). For the purposes of implementation in the United Kingdom the Household Appliances (Noise Emission) Regulations 1990, SI 1990/161 (amended by SI 1994/1386; SI 2004/693) and the Ecodesign for Energy-Using Products Regulations 2007, SI 2007/2037 (amended by SI 2009/2560) were made. See also PARA 817.

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(xi) Nature Conservation

54. Nature conservation.

European Union legislation relating to nature conservation provides for the protection of natural habitats¹, and makes provision for the conservation of species of flora and fauna².

Generally the conservation of natural habitats is dealt with elsewhere in this work³.

1 See EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) on the conservation of natural habitats and of wild fauna and flora (the 'Habitats Directive') (amended by EC Council Directive 97/62 (OJ L305, 8.11.1997, p 42). See also note 2.

2 See eg EEC Council Directive 79/409 (OJ L103, 25.4.79, p 1) on the conservation of wild birds (the 'Wild Birds Directive') (amended by EEC Council Directive 94/24 (OJ L164, 30.6.94, p 9); and European Parliament and EC Council Directive 2008/12 (OJ L323, 3.12.2008, p 31)). See also eg EEC Council Directive 83/129 (OJ L91, 9.4.83, p 30) concerning the importation into member states of skins of certain seal pups and products derived therefrom; EEC Council Regulation 3254/91 (OJ L308, 9.11.91 p 1) prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards; and EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of wild fauna and flora by regulating trade therein (amended by EC Commission Regulation 1000/98 (OJ L145, 15.5.98, p 3); EC Commission Regulation 1808/2001 (OJ L250, 19.9.2001, p 1); EC Commission Regulation 1497/2003 (OJ L215, 27.8.2003, p 3); EC Commission Regulation 834/2004 (OJ L127, 29.4.2004, p 40); EC Commission Regulation 1332/2005 (OJ L215, 19.8.2005, p 1)). The Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842 (see PARA 525) were made for the purposes of implementing Directives 79/409 and 92/43. See now also the Conservation of Habitats and Species Regulations 2010, SI 2010/490; and **OPEN SPACES AND COUNTRYSIDE**.

See also European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56) on environmental liability with regard to the prevention and remedying of environmental damage (amended by European Parliament and EC Council Directive 2006/21 (OJ L102, 11.4.2006, p 15)). The Environmental Damage (Prevention and Remediation) Regulations 2009, SI 2009/153, were made for the purposes of implementing Directive 2004/35 in the United Kingdom: see PARA 5 note 7. As to the meaning of 'United Kingdom' see PARA 1 note 2.

As to rules on the implementation of EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) see EC Council Regulation 865/2006 (OJ L166 19.6.2006 p 1).

3 See **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 663 et seq.

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(xii) Environmental Information and Participation

55. Access to information and justice, participation in decision-making.

European Union legislation¹ aims to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, its exercise, and to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information (to this end, promoting where possible the use of computer telecommunication and/or electronic technology)². Such authorities are required to make available information relating to the environment to any natural or legal person at his request and without his having to state an interest³. A charge, not exceeding a reasonable cost, may be made for supplying such information⁴. A response to a request for information must be made as soon as possible and at the latest within two months, and the reasons for a refusal to provide the information requested must be given together with details of review procedures⁵. A judicial or administrative review of the decision must be available⁶. Member states are also required to provide general information on the state of the environment⁷.

1. The European Parliament and EC Council Directive 2003/4 (OJ L41, 14. 2. 2003, p 26) on public access to environmental information and repealing Directive 90/31.

See also the Convention on access to information, public participation in decision-making and access to justice in environmental matters (signed at the Fourth Ministerial Conference 'Environment for Europe' in June 1998; TS 24 (2005) Cm 6586) (the 'Aarhus Convention'). The Convention is designed to contribute to the protection of the right of every person of both present and future generations to live in an environment adequate to his health or well-being by means of guaranteeing rights of access to information, public participation in decision-making and access to justice in environmental matters: see art 1. Parties must ensure that public authorities, in response to a request for environmental information, make such information available to the public without an interest having to be stated as soon as possible and at the latest within one month of the request being submitted: see art 4(1), (2). If a public authority does not hold the information requested it must inform the applicant as promptly as possible of the authority which it believes holds the information or transfer the request to that authority and inform the applicant that it has done so: see art 4(5). There are a range of exceptions to this right including: (1) the information is already publicly available in another form; (2) the request is manifestly unreasonable or formulated in too general a manner; or (3) where the request would adversely affect the confidentiality of the proceedings of public authorities; international relations, national defence or public security; the course of justice; the confidentiality of commercial or industrial information; intellectual property rights; or the confidentiality of personal data: see art 4(1)(b), (3), (4). These grounds are to be interpreted in a restrictive way taking account of the public interest served by disclosure and whether the information relates to emissions into the environment: see art 4(4). Reasons for refusals of requests must be given in writing: see art 4(7). Reasonable amounts may be charged for the supply of information and schedules of such charges must be made available to applicants: see art 4(8). There are also obligations on parties in relation to the collection and dissemination of environmental information: see art 5. Parties must progressively develop a coherent, nationwide system of pollution inventories or registers held on a structured, computerised and publicly accessible database compiled through standardised reporting: see art 5(9). A variety of voluntary forms of regulation are also promoted by the Convention including the use of eco-labelling (see PARA 56), eco-auditing (see PARA 57): see art 5(6). There is also a requirement to develop product information mechanisms to enable consumers to make informed environmental choices: see art 5(8). Parties must provide access to a review procedure before a court or another independent and impartial body established by law for a person who considers that his or her request for information has been ignored, wrongfully refused (in whole or in part), inadequately answer or otherwise not dealt with under the Convention's provisions: see art 9(1). Where review by a court is provided, a person must also be given access to a free or inexpensive expeditious procedure

established by law for reconsideration by a public authority or for review by an independent and impartial body other than a court: see art 9(1).

The Aarhus Convention also contains important obligations in relation to: (a) permitting public participation in decision making on whether to permit specified activities and other activities which, although not specified, may have a significant effect on the environment; (b) public participation in the preparation of plans, programmes and policies relating to the environment; and (c) such participation during the preparation of executive regulations and other legally binding normative instruments: see arts 6-8, Annex 1. Parties must ensure that members of the public with a sufficient interest, or who maintain impairment of a right where this is a precondition under the national administrative procedural law, have access to a review procedure before a court or other independent and impartial body to challenge the substantive and procedural legality of any decision, act or omission in relation to other relevant provisions of the convention: see art 9(2). In all cases, the court or other review procedures must provide adequate and effective remedies including injunctive relief as appropriate and be fair, equitable, timely and not prohibitively expensive with decisions being in writing and publicly accessible: see art 9(4). Information must be provided to the public on access to administrative and judicial review procedures and parties must also consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice: see art 9(5).

See further European Parliament and EC Council Regulation 1367/2006 (OJ L264, 25.9.2006, p 13) on the application of the provisions of the Aarhus Convention to Community institutions and bodies; EC Commission Decision 2008/50 (OJ L13, 16.1.2008, p 24) laying down detailed rules for the application of Regulation 1367/2006; EC Council Decision 2006/957 (OJ L 386, 29.12.2006, p 46) on the conclusion, on behalf of the European Community, of an amendment to the Convention on access to information, public participation in decision-making and access to justice in environmental matters; and European Parliament and EC Council Regulation 401/2009 (OJ L 126, 21.5.09, p 13) on the European Environment Agency and the European Environment and Observation Network (Codified version). As to the Secretary of State's power to make provision for the purpose of implementing provisions of the Aarhus Convention (see above) relating to environmental information see the Freedom of Information Act 2000 s 74; and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 600. For the purposes of implementation in the United Kingdom the Environmental Information Regulations 2004, SI 2004/3391, were made: see **WATER AND WATERWAYS** vol 101 (2009) PARAS 680, 681; **HEALTH AND SAFETY AT WORK**. As to the meaning of 'United Kingdom' see PARA 1 note 2.

The principle of the Aarhus Convention (see above) that costs in environmental proceedings should not be 'prohibitively expensive' was, at most, a matter to which the court might have regard in exercising its discretion: *Morgan v Hinton Organics (Wessex) Ltd* [2009] EWCA Civ 107, [2009] 2 P & CR 30, [2009] All ER (D) 14 (Mar). Where more than one exception to disclosure under the Environmental Information Regulations 2004, SI 2004/3391, reg 12(5) (see above) was found to apply they were to be considered together for the purpose of the public interest balancing exercise under reg 12(1)(b): *Office of Communications v Information Comr* [2009] EWCA Civ 90, (2009) Times, 27 February, [2009] All ER (D) 212 (Feb); and on further appeal the question (ie when a public authority relied on more than one of the exceptions to the disclosure obligation whether each exception should be considered separately or whether the interests served by different exceptions could be combined and then weighed against the public interest in disclosure) was referred to the European Court of Justice: see [2010] UKSC 3, [2010] All ER (D) 167 (Jan).

2 See European Parliament and EC Council Directive 2003/4 (OJ L41, 14. 2. 2003, p 26) art 1.

3 European Parliament and EC Council Directive 2003/4 (OJ L41, 14. 2. 2003, p 26) art 3(1). See also art 2. The information that is to be made available includes a statement of views given by a countryside protection authority in development consent proceedings (see PARA 7) if that statement is capable of influencing the outcome of the proceedings in question regarding interests pertaining to protection of the environment: Case C-321/96: *Wilhelm Mecklenburg v Kreis Pinneberg - der Landrat* [1999] All ER (EC) 166, [1998] ECR I-3809, ECJ (decided under a previous Directive). Certain information may be exempted: see European Parliament and EC Council Directive 2003/4 (OJ L41, 14. 2. 2003, p 26) art 3(3), (4). As to exceptions see also art 4.

4 See European Parliament and EC Council Directive 2003/4 (OJ L41, 14. 2. 2003, p 26) art 5.

5 See European Parliament and EC Council Directive 2003/4 (OJ L41, 14. 2. 2003, p 26) arts 3(2), 4(5). See Case C-186/04: *Housieaux v Delegates du Conseil de la Region de Bruxelles-Capitale* [2005] ECR I-3299, [2005] All ER (D) 277 (Apr), ECJ (in regard to an earlier version of these provisions).

6 See European Parliament and EC Council Directive 2003/4 (OJ L41, 14. 2. 2003, p 26) art 6. See Case C-186/04: *Housieaux v Delegates du Conseil de la Region de Bruxelles-Capitale* [2005] ECR I-3299, [2005] All ER (D) 277 (Apr), ECJ.

7 See European Parliament and EC Council Directive 2003/4 (OJ L41, 14. 2. 2003, p 26) art 7.

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56. Eco-labels.

European Union legislation sets the framework for a voluntary scheme for the award of eco-labels¹. The scheme is intended to promote products which have the potential to reduce negative environmental impacts, thus contributing to the efficient use of resources and a high level of environmental protection; and this objective is to be pursued through the provision of guidance and information to consumers². The eco-label may be awarded to products which comply with the essential environmental requirements and the eco-label criteria³. The conditions for awarding the label are defined by product group⁴. Member states must promote the use of the eco-label⁵, with which national environmental labelling schemes may co-exist⁶.

Eco-label criteria have been published for the following product groups: washing machines⁷, dishwashers⁸, soil improvers⁹, tissue paper¹⁰, kitchen rolls¹¹, laundry detergents¹², light bulbs¹³, indoor paints and varnishes¹⁴, bed-linen and T-shirts¹⁵, copying paper¹⁶, refrigerators¹⁷, personal computers¹⁸, footwear¹⁹, textile products²⁰, soaps, shampoos and hair conditioners²¹, and electrically-driven, gas-driven and gas absorption heat pumps²².

1 See European Parliament and EC Council Regulation 1980/2000 (OJ L237, 21.9.2000, p 1) on a revised Community eco-label award scheme, which repeals (with savings) EEC Council Regulation 880/92 (OJ L99, 11.4.92, p 1) on a Community eco-label award scheme. See also EEC Commission Decision 93/517 (OJ L243, 29.9.93, p 13) on a standard contract covering the terms of use of the Community eco-label; EEC Commission Decision 93/326 (OJ L129, 25.7.93, p 23) establishing indicative guidelines for the fixing of costs and fees in connection with the Community eco-label; and EC Commission Decision 2006/402 (OJ L 162, 14.6.2006, p 78) establishing the Community Eco-label working plan.

2 See European Parliament and EC Council Regulation 1980/2000 (OJ L237, 21.9.2000, p 1) art 1.

3 See European Parliament and EC Council Regulation 1980/2000 (OJ L237, 21.9.2000, p 1) art 2. As to the essential environmental requirements see art 3; and as to the eco-label criteria see art 4.

4 See European Parliament and EC Council Regulation 1980/2000 (OJ L237, 21.9.2000, p 1) art 6.

5 See European Parliament and EC Council Regulation 1980/2000 (OJ L237, 21.9.2000, p 1) art 10.

6 See European Parliament and EC Council Regulation 1980/2000 (OJ L237, 21.9.2000, p 1) art 11.

7 See EC Commission Decision 96/461 (OJ L191, 1.8.96, p 56) establishing ecological criteria for the award of the Community eco-label to washing machines. See also EC Commission Decision 2000/45 (OJ L16, 21.1.2000, p 74) (amended by EC Commission Decision 2005/384 (L127, 20.5.2005, p 20)).

8 See EC Commission Decision 98/483 (OJ L216, 4.8.98, p 12) establishing ecological criteria for the award of the Community eco-label to dishwashers; and EC Commission Decision 99/427 (OJ L162, 2.7.99, p 38) establishing the ecological criteria for the award of the Community eco-label to detergents for dishwashers (amended by EC Commission Decision 2003/31 (OJ L9, 15.1.2003, p 11)). See also EC Commission Decision 2001/689 (OJ L242, 12.9.2001, p 23) (amended by EC Commission Decision 2007/457 (OJ L173, 3.7.2007, p 29)).

9 See EC Commission Decision 98/488 (OJ L219, 7.8.98, p 39) establishing the ecological criteria for the award of the Community eco-label to soil improvers. See also EC Commission Decision 2001/688 (OJ L242, 12.9.2001, p 17) (amended by EC Commission Decision 2005/384, L127, 20.5.2005, p 20)).

10 See EC Commission Decision 98/94 (OJ L19, 24.1.98, p 77) establishing the ecological criteria for the award of the Community eco-label to tissue-paper products (modified by EC Commission Decision 2000/413 (OJ L155, 28.6.2000, p 63)).

11 See EC Commission Decision 94/925 (OJ L364, 31.12.94, p 32) establishing the ecological criteria for the award of the Community eco-label to kitchen rolls.

12 See EC Commission Decision 95/365 (OJ L217, 13.9.95, p 14) establishing the ecological criteria for the award of the Community eco-label to laundry detergents. See also EC Commission Decision 99/476 (OJ L187, 20.7.99, p 52) establishing the ecological criteria for the award of the Community eco-label to laundry detergents.

13 See EC Commission Decision 99/568 (OJ L216, 14.08.99, p 18) establishing the ecological criteria for the award of the Community eco-label to light bulbs.

14 See EC Commission Decision 96/13 (OJ L4, 6.1.96, p 8) establishing the ecological criteria for the award of the Community eco-label to indoor paints and varnishes.

15 See EC Commission Decision 96/304 (OJ L116, 11.5.96, p 30) establishing the ecological criteria for the award of the Community eco-label to bed linen and T-shirts (amended by EC Commission Decision 97/864 (OJ L351, 23.12.97, p 66)).

16 See EC Commission Decision 99/554 (OJ L210, 10.8.99, p 16) establishing the ecological criteria for the award of the Community eco-label to copying paper.

17 See EC Commission Decision 96/703 (OJ L323, 13.12.96, p 34) establishing the ecological criteria for the award of the Community eco-label to refrigerators. See also EC Commission Decision 2000/40 (OJ L13, 19.1.2000, p 22).

18 See EC Commission Decision 99/205 (OJ L70, 17.3.99, p 46) establishing the ecological criteria for the award of the Community eco-label to personal computers. See also EC Commission Decision 2001/686 (OJ L242, 12.9.2001, p 4). As to criteria for portable computers see EC Commission Decision 2001/687 (OJ L242, 12.9.2001, p 11).

19 See EC Commission Decision 99/179 (OJ L57, 5.3.99, p 3) establishing the ecological criteria for the award of the Community eco-label to footwear.

20 See EC Commission Decision 99/178 (OJ L57, 5.3.99, p 21) establishing the ecological criteria for the award of the Community eco-label to textile products.

21 See EC Commission Decision 2007/506 (OJ L186, 18.7.2007, p 36)) establishing the ecological criteria for the award of the Community eco-label to soaps, shampoos and hair conditioners.

22 See EC Commission Decision 2007/742 (OJ L301, 20.11.2007, p 14)) establishing the ecological criteria for the award of the Community eco-label to electrically-driven, gas-driven and gas absorption heat pumps.

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(xiii) Environmental Management and Auditing Systems

57. Environmental management and auditing systems.

Provision is made allowing voluntary participation by companies in the industrial sector in the European Union eco-management and audit scheme¹. The scheme was established for the evaluation and improvement of the environmental performance of organisations and the provision of relevant information to the public and other interested parties². The objective of the scheme is to promote continuing improvements in the environmental performance of industrial activities by: (1) the establishment and implementation of environmental policies, programmes and management systems by organisations, in relation to their sites; (2) the systematic, objective and periodic evaluation of performance; (3) the provision of information on environmental performance to the public and other interested parties; and (4) the active involvement of employees in the organisation and appropriate initial and advanced training that makes active participation in the tasks referred to under head (1) possible³. The scheme is open to the participation of any organisation dedicated to improving its overall environmental performance⁴ and there are provisions both about qualifying for registration and what is necessary for maintaining registration⁵.

Participants must adopt an environmental policy, which should include compliance with regulatory instruments, continued improvement in environmental performance, and the reduction of environmental impacts⁶. Participants must also conduct an environmental review of the site; introduce an environmental programme and environmental management system; carry out an environmental audit; prepare an environmental statement specific to each site audited; and have the environmental policy, programme, management system, review or audit procedure and environmental statement or statements independently verified⁷. A participating company must submit the environmental statement to the relevant competent body for registration⁸ and disseminate it to the public⁹.

Participation in the scheme entitles a site to adopt a statement of participation and a symbol of participation, but not to use these to advertise products, or on the products themselves or on their packaging¹⁰.

Member states must take appropriate legal or administrative measures in case of non-compliance by participants¹¹.

1 See European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) allowing voluntary participation by organisations in a Community eco-management and audit scheme (amended by EC Commission Regulation 196/2006 (OJ L32, 4.2.2006, p 4)), which replaces EEC Council Regulation 1836/93 (OJ L168, 10.7.93, p 1). For guidance on the implementation of European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) see EC Commission Decision 2001/681 (OJ L247, 17.9.2001, p 24).

2 See European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) art 1(1).

3 See European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) art 1(2).

4 See European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) art 3(1).

5 See European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) art 3(2), (3).

- 6 See generally European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) art 3.
- 7 See generally European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) art 3. As to accreditation of environmental verifiers see art 4.
- 8 As to registration see European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) art 6. Companies implementing recognised national, European and international standards may in certain circumstances be eligible for registration: see art 9.
- 9 See European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) art 3. As to information see art 12.
- 10 See European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) art 8. However see EC Commission Decision 2006/193 (OJ L70 9.3.2006 p 63) allowing the use of the EMAS logo in the exceptional cases of transport packaging and tertiary packaging.
- 11 See European Parliament and EC Council Regulation 761/2001 (OJ L114, 24.4.2001, p 1) art 13

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2. ADMINISTRATION

(1) CENTRAL ADMINISTRATION

(i) The Secretary of State and the Welsh Ministers

A. ALLOCATION OF FUNCTIONS

58. The Secretary of State.

In earlier legislation environmental and public health functions were generally allocated to specific ministers or government departments, but most of these functions have now devolved to the Secretary of State¹. Modern statutes generally refer simply to the Secretary of State. In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State². The office of Secretary of State is one, and in law each Secretary of State is generally capable of performing the functions of all or any of them³.

In practice, public health and environmental functions in England are now mostly divided between the Secretary of State for Health⁴ and the Secretary of State for Environment, Food and Rural Affairs⁵. In regard to pollution of water⁶ the relevant Secretary of State is usually the Secretary of State for Environment, Food and Rural Affairs⁷. In regard to shipping and pollution⁸ it is most often the Secretary of State for Transport⁹. In regard to the fuel and energy sectors and matters touching on climate change¹⁰ it varies but is often the Secretary of State for Business, Innovation and Skills (formerly the Secretary of State for Business, Enterprise and Regulatory Reform)¹¹.

The Secretary of State also has power under the Natural Environment and Rural Communities Act 2006¹² to enter into certain flexible administrative arrangements with designated bodies authorising those bodies to perform certain government functions¹³.

1 The Public Health Act 1875, the Public Health Acts Amendment Act 1890 and the Public Health Acts Amendment Act 1907 refer to the Local Government Board. The Public Health Act 1925 and the Public Health Act 1936 refer to the Minister of Health. The Public Health Act 1961 and the Public Lavatories (Turnstiles) Act 1963 refer to the Minister of Housing and Local Government. As to the transfer of functions to the Secretary of State see the Ministry of Health Act 1919 s 3(1)(a), (5), Sch 1 (repealed); the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No 1) Order 1951, SI 1951/142, art 3, Schedule Pt I; the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No 2) Order 1951, SI 1951/753; the Minister of Local Government and Planning (Change of Style and Title) Order 1951, SI 1951/1900; the Secretary of State for Wales and Minister of Land and Natural Resources Order 1965, SI 1965/319, art 2(1), Sch 1 Pt I; the Secretary of State for Social Services Order 1968, SI 1968/1699, art 2; the Secretary of State for the Environment Order 1970, SI 1970/1681, art 2; the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, art 3; the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 452 et seq. Many statutory provisions refer to the Minister of Agriculture, Fisheries and Food, but since the dissolution of the Ministry of Agriculture, Fisheries and Food functions relating to public health and environmental matters have been transferred to the Secretary of State: see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794. As to the transfer of functions in relation to Wales see PARA 59.

2 See the Interpretation Act 1978 s 5, Sch 1.

3 As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.

4 As to the Secretary of State for Health see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 463-465. The appropriate website for the relevant department where national strategies may be found was, at the date at which this volume states the law, www.dh.gov.uk.

5 As to the Secretary of State for Environment, Food and Rural Affairs see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 452 et seq. Also of relevance are the Secretary of State for Communities and Local Government (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355); the Secretary of State for Energy and Climate Change (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 453); and possibly the Secretary of State for Business, Innovation and Skills (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 453). The appropriate websites for the relevant departments where national strategies may be found are, at the date at which this volume states the law, www.defra.gov.uk; www.communities.gov.uk; www.decc.gov.uk; and www.bis.gov.uk. The first of these sites contained, at such date, *Securing the Future - UK Government sustainable development strategy* (2005); and national strategies for air and water.

6 As to water pollution see PARA 270 et seq.

7 As to the Secretary of State see generally also **WATER AND WATERWAYS** vol 100 (2009) PARA 15. See note 5.

8 As to shipping and pollution see PARA 347 et seq.

9 As to the Secretary of State see generally also **SHIPPING AND MARITIME LAW** vol 93 (2008) PARAS 38, 39.

In the Merchant Shipping Act 1995 there is also a specific provision about the Secretary of State in relation to marine pollution. The Secretary of State continues to have the functions of taking, or co-ordinating, measures to prevent, reduce and minimise the effect of, marine pollution: s 293(1). For these purposes, 'marine pollution' means pollution caused by ships, offshore installations or submarine pipe-lines affecting or likely to affect the United Kingdom or United Kingdom waters or controlled waters: s 293(5). 'Offshore installation' means any installation which is maintained for underwater exploitation or exploration to which the Mineral Workings (Offshore Installations) Act 1971 (see **FUEL AND ENERGY**) applies: Merchant Shipping Act 1995 s 293(5). 'Pipe-line' has the same meaning as in the Petroleum Act 1998 Pt III (ss 14-28) (see **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 602); and 'submarine' means in, under or over United Kingdom waters or controlled waters: Merchant Shipping Act 1995 s 293(5) (definition of 'pipe-line' amended by the Petroleum Act 1999 Sch 4 para 39). As to the meaning of 'United Kingdom waters' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 48. 'United Kingdom controlled waters' means any part of the sea within the limits of an area designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636); Merchant Shipping Act 1995 s 293(5). As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124. Without prejudice to the generality of the Merchant Shipping Act 1995 s 293(1) (see above), the functions of the Secretary of State thereunder include: (1) the preparation, review and implementation of a national plan setting out arrangements for responding to incidents which cause or may cause marine pollution with a view to preventing such pollution or reducing or minimising its effects; (2) the acquisition, maintenance, use and disposal of ships, aircraft, equipment and other property; (3) the provision of services, including research, training and advice; (4) the giving of assistance to any other State or international institution under any international agreement relating to the prevention, reduction or control of marine pollution; and (5) any other functions exercisable on his behalf on 1 October 1994 by the Marine Pollution Control Unit: s 293(2) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 17). Assistance under head (3) above must be given on such terms as will secure reimbursement of the cost of giving the assistance if and to the extent that reimbursement will be practicable in the circumstances: Merchant Shipping Act 1995 s 293(3). The Secretary of State may make reasonable charges for the supply of goods or services: s 293(4). Where under s 293(1) (see above) the Secretary of State agrees that another person take any measures to prevent, reduce or minimise the effects of marine pollution, he may agree to indemnify that other person in respect of liabilities incurred by that person in connection with the taking of the measures: s 293(4A) (added by the Merchant Shipping and Maritime Security Act 1997 s 6).

10 As to environmental duties in fuel and energy sectors see PARA 576 et seq. As to climate change see PARA 259 et seq.

11 As to the Secretary of State see also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601. See note 5.

12 Ie under the Natural Environment and Rural Communities Act 2006 Pt 8 Ch 1 (ss 78-86): see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 520 et seq.

13 Ie functions that would otherwise be performed by the Department for Environment, Food and Rural Affairs or the Department of Energy and Climate Change: see the Natural Environment and Rural Communities Act 2006 s 86; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 520.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/2. ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(i) The Secretary of State and the Welsh Ministers/A. ALLOCATION OF FUNCTIONS/59. The National Assembly for Wales and the Welsh Ministers.

59. The National Assembly for Wales and the Welsh Ministers.

Many statutory functions previously vested in Ministers of the Crown became exercisable in relation to Wales by the National Assembly for Wales¹. Following the re-organisation of devolved government in Wales under the Government of Wales Act 2006, the functions transferred to the Assembly are now exercisable by the Welsh Ministers, whilst any requirement as to consultation or agreement requires consultation with, or the agreement of, the Welsh Ministers².

Functions so transferred include certain functions under the Public Health Act 1875³, the Public Health Acts Amendment Act 1907⁴, the Public Health Act 1925⁵, the Public Health Act 1936⁶, the Prevention of Damage by Pests Act 1949⁷, the Pests Act 1954⁸, the Public Health Act 1961⁹, the Public Lavatories (Turnstiles) Act 1963¹⁰, the Control of Pollution Act 1974¹¹, the Refuse Disposal (Amenity) Act 1978¹², the Litter Act 1983¹³, the Public Health (Control of Disease) Act 1984¹⁴, the Food and Environment Protection Act 1985¹⁵, the Control of Pollution (Amendment) Act 1989¹⁶, the Environmental Protection Act 1990¹⁷, the Water Industry Act 1991¹⁸, the Water Resources Act 1991¹⁹, the Clean Air Act 1993²⁰, the Noise and Statutory Nuisance Act 1993²¹, the Environment Act 1995²², the Noise Act 1996²³, the Pollution Prevention and Control Act 1999²⁴ and functions under various regulations²⁵.

However, any power under which provisions of an Act of Parliament may be brought into force by order made by a Minister of the Crown is not transferred²⁶.

1 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 2, Sch 1. See also the National Assembly for Wales (Transfer of Functions) Order 2005, SI 2005/1958; and note 24.

2 See the Government of Wales Act 2006 s 162(1), Sch 11 para 30. 'Welsh Ministers' means the First Minister and the Welsh Ministers appointed under the Government of Wales Act 2006 s 48: see s 45(2). As to the First Minister and the Welsh Ministers see the Government of Wales Act 2006 ss 46-48; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to devolved government in Wales generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the exercise of transferred functions and the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see Sch 11 paras 33-35 (in the case of functions transferred to the Assembly by Order in Council under the Government of Wales Act 1998 s 22) or the Government of Wales Act 2006 Sch 3 para 9 (in the case of functions transferred to the Welsh Ministers by Order in Council under s 58); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

Her Majesty may by Order in Council: (1) provide for the transfer to the Welsh Ministers, the First Minister or the Counsel General of any function so far as exercisable by a Minister of the Crown in relation to Wales; (2) direct that any function so far as so exercisable is to be exercisable by the Welsh Ministers, the First Minister or the Counsel General concurrently with the Minister of the Crown; or (3) direct that any function so far as exercisable by a Minister of the Crown in relation to Wales is to be exercisable by the Minister of the Crown only with the agreement of, or after consultation with, the Welsh Ministers, the First Minister or the Counsel General: see s 58, Sch 3; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the possible intervention of the Secretary of State where it appears to him that the exercise of a relevant function in any particular case may have a serious impact on water resources in England, water supply in England or the quality of water in England see s 152; and **WATER AND WATERWAYS** vol 100 (2009) PARA 16. See also notes 18, 19. As to legislative competence of the National Assembly for Wales in regard to environment matters see s 94, Sch 5 Pt 1 Field 6 (amended by SI 2010/248); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**; and as to exceptions see the Government of Wales Act 2006 Sch 5 Pt 2 (amended by SI 2010/248); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

- 3 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions under the Public Health Act 1875 s 327 (largely repealed) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Public Health Act 1875 see PARA 2.
- 4 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions under the Public Health Acts Amendment Act 1907 ss 12, 94(4) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Public Health Acts Amendment Act 1907 see PARA 2.
- 5 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The functions transferred are those under the Public Health Act 1925 s 6: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Public Health Act 1925 s 6 see PARA 1 note 39; and as to the Public Health Act 1925 generally see PARA 2.
- 6 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The Treasury function under the Public Health Act 1936 s 341(3) (see PARA 108) is excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Public Health Act 1936 see PARAS 1, 113 et seq, 855 et seq, 960 et seq, 980 et seq. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.
- 7 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. All functions under the Prevention of Damage by Pests Act 1949 are transferred, save that to the extent that the Act provides for the carrying out of research by the Secretary of State, that function is exercisable by the Assembly concurrently: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Prevention of Damage by Pests Act 1949 see PARA 861 et seq. As to the Secretary of State see PARA 58.
- 8 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Pests Act 1954 see PARA 861.
- 9 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions excepted from the transfer are those of a Minister of the Crown exercisable as appropriate authority under the Public Health Act 1961 s 45, Sch 4 in respect of: (1) a building owned by railway, canal, dock, harbour or inland navigation undertakers; (2) a building owned by electricity or gas undertakers; (3) a building forming part of an aerodrome; (4) a building owned by the Post Office; (5) a building owned by British Telecommunications plc: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Public Health Act 1961 see PARAS 1, 759, 858, 883, 979, 1075, 1078.
- 10 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Public Lavatories (Turnstiles) Act 1963 see PARA 737.
- 11 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions under the Control of Pollution Act 1974 s 102(2) (see PARA 66) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Control of Pollution Act 1974 see PARAS 131 et seq, 620, 724-725, 819 et seq.
- 12 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Refuse Disposal (Amenity) Act 1978 see PARA 741 et seq.
- 13 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Litter Act 1983 see PARAS 717-719.
- 14 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions under the Public Health (Control of Disease) Act 1984 s 28 (prospectively repealed) (see PARA 897) and the Treasury function under s 73(4) (see PARA 110) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Public Health (Control of Disease) Act 1984 see PARAS 102 et seq, 137 et seq, 884 et seq.
- 15 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Excepted from the transfer are functions under the Food and Environment Protection Act 1985 Pt II (ss 5-15) (see PARA 525 et seq) so far as exercisable in relation to matters concerning or arising from the exploration for, or production of, petroleum; and also the functions of the Minister of Agriculture, Fisheries and Food under ss 16, 18, Sch 5 paras 1-3; and it is directed that the functions under ss 1(1), 3(1), (2), s 13 (see PARA 567), s 14(2), (3) (see PARA 551), s 17 and Sch 5 paras 4-6 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable; and the Treasury consent requirements under s 8(9) (see PARA 532), ss 16(2), 18(4) continue in effect: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The functions of the Minister of Agriculture, Fisheries and Food were transferred to the

Secretary of State: see PARA 58 note 1. As to other provisions of the Food and Environment Protection Act 1985 (ie apart from Pt II) see generally **AGRICULTURE AND FISHERIES; AGRICULTURAL PRODUCTION AND MARKETING; FOOD.**

16 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Control of Pollution (Amendment) Act 1989 see PARA 709 et seq.

17 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Certain functions are excepted from the transfer, including those under the Environmental Protection Act 1990 s 140, Sch 12 relating to the importation into and the landing and unloading in the United Kingdom of any specified substance or article (see PARA 789), s 141 (see PARA 716), s 153 (see PARA 66), and s 156 (other than as it applies to Pt II (ss 29-78) (see PARA 62): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (amended by SI 2006/3334). Functions that formerly belonged to the Minister of Agriculture, Fisheries and Food under the Environmental Protection Act 1990 Pt VI (ss 106-127) (see PARA 793 et seq), which were excepted, have now been transferred: see the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 2, Sch 1. As to the meaning of 'United Kingdom' see PARA 1 note 2.

The functions of the Secretary of State under the Environmental Protection Act 1990 s 4(8A) (prospectively repealed) (see PARA 161), s 20(6) (prospectively repealed) (so far as relating to s 21 (prospectively repealed)) (see PARAS 178-179), s 21 (prospectively repealed) (see PARA 179), s 71 (see PARA 626), s 78S (see PARA 781), s 123(1) (see PARA 808), s 159(4) (see PARA 111) are exercisable concurrently with the Secretary of State: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions of the Secretary of State under the Environmental Protection Act 1990 s 153 (see PARA 66), so far as they conduce to the protection, improvement or better understanding of the environment of, or any part of, Wales, are also exercisable concurrently with the Secretary of State: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

The Treasury approval requirements under the Environmental Protection Act 1990 s 8(2) (prospectively repealed) (see PARA 166) and s 113 (see PARA 799) continue in effect: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

18 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Certain functions under the Water Industry Act 1991 are excepted from the transfer, including functions under s 206(3) (e) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 183): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (amended by SI 2000/253; and SI 2006/3334). Certain functions, including functions under the Water Industry Act 1991 ss 94-96 (see PARAS 1010, 1014-1016), s 101A (see PARA 1021), s 103 (see PARA 1004), s 104 (see PARA 1006), s 143(3A) (see PARA 1021), s 158 (see PARA 1024), s 182 (see PARA 1028), s 199 (see PARA 1009), and s 200 (see PARA 1009), are transferred to the Assembly in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (amended by the Water Act 2003 s 100(2), (4), Sch 9 Pt 3; SI 2000/253; SI 2002/2626; SI 2004/3044; SI 2006/3334). As to the Water Industry Act 1991 see PARA 998 et seq; and **WATER AND WATERWAYS**. See also note 2.

19 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Excepted are functions under the Water Resources Act 1991 s 82 (see PARA 330) so far as exercisable in relation to those parts of Wales which are within the catchment areas of the rivers Dee, Wye and Severn; and s 102, Sch 25 para 2(2) (see PARA 23): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions under the Water Resources Act 1991 s 92 (see PARA 313) are transferred only in relation to those parts of Wales which are outside the catchment areas of the rivers Dee, Wye and Severn and in relation to those parts of Wales which are within those catchment areas it is directed that the functions under s 92 are exercisable concurrently with the Secretary of State: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. In regard to the Water Resources Act 1991 s 82 (see PARA 330) the function of the Secretary of State is exercisable only with the agreement of the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 2. As to other provisions of the Water Resources Act 1991 (ie apart from Pt III (ss 82-104) (see PARA 288 et seq), ss 161-162 (see PARA 321 et seq) and ss 190, 202, 203 (see PARAS 343, 345, 346)) see generally **WATER AND WATERWAYS**. See also note 2.

20 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions under the Clean Air Act 1993 ss 30-32 (see PARA 236), s 36(6) (see PARA 240), and s 48 (see PARA 207) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The function under the Clean Air Act 1993 s 46(1) (see PARA 210) is exercisable concurrently with any Minister of the Crown by whom it is exercisable: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Clean Air Act 1993 see PARA 207 et seq.

21 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Noise and Statutory Nuisance Act 1993 see PARAS 842-843.

22 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions excepted from the transfer are those under the Environment Act 1995 s 1(2)(a), (3) (see PARA 68), s 41 (see PARA 97), s 42 (other than s 42(10)) (see PARA 97), s 45(4) (see PARA 91), s 48(5) (see PARA 94), and s 52(3) (see PARA

87), the function of laying copy accounts and reports before each House of Parliament under s 46(3) (see PARA 92), and the function of the Treasury under s 49(5) (see PARA 95): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

Functions under the following provisions are transferred not in relation to Wales, but in the manner indicated:

- 1 (1) the function under the Environment Act 1995 s 1(2)(b) (see PARA 68) is transferred to the extent that it may make such appointments as will ensure that there is at all times one member of the Environment Agency appointed by it; only functions vested in the appropriate minister are transferred; and only to the extent that such functions relate to any member appointed by the Welsh Ministers (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1);
- 2 (2) functions under the Environment Act 1995 s 12, Sch 3 (see PARA 83) are transferred in relation to such region as is determined under s 12(6) (see PARA 83) and the committee which is established for that region (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1);
- 3 (3) functions under the Environment Act 1995 s 13 (see PARA 84) are transferred in relation to such region as is determined under s 13(5) (see PARA 84) and the committee which is established for that region and such local advisory committees, and their respective areas of responsibility, as are established within that region (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1).

As to the Environment Agency see PARA 68 et seq.

The function under the Environment Act 1995 s 48(2) and s 48(4) (see PARA 94) is exercisable concurrently with any other Minister of the Crown by whom it is exercisable but subject to the limitation that the Welsh Ministers are not to have power to consent to any borrowing which would cause the aggregate amount outstanding in respect of the principal of sums borrowed by the Environment Agency in pursuance of consent given under s 48(2) to exceed £10 million: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

The functions under the Environment Act 1995 s 37(2), (4) (see PARA 73), s 38 (see PARA 86), s 44 (see PARA 90), s 46(1) (see PARA 92), s 47 (see PARA 93), s 48(3) (see PARA 94), s 49 (except the function of the Treasury under s 49(5)) (see PARA 95), s 50 (see PARA 96), s 51 (see PARA 88), s 52(2), (4) (see PARA 87), s 53(1)(b) (see PARA 89), s 113 (see PARA 153) and s 115(5) (see PARA 112) are exercisable concurrently with any other Minister of the Crown by whom they are exercisable: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The function under the Environment Act 1995 s 47 (see PARA 93) is exercisable free from the requirement for Treasury approval: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

In respect of the Environment Act 1995 s 40 (see PARA 74): (a) it is directed that the functions under that provision are exercisable concurrently with any Minister of the Crown by whom they are exercisable; (b) this direction is made, not in relation to Wales, but in relation to the Environment Agency as a cross-border body; (c) to the extent specified in head (d) below, functions under s 40 are exercisable only with the agreement of the Secretary of State; (d) the requirement to exercise functions only with the agreement of the Secretary of State applies where such exercise would have any effect in England or, additionally, being an exercise of the functions in relation to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, it would have any effect in those parts of Wales which are within the catchment areas of the rivers Dee, Wye and Severn: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

The requirement under the Environment Act 1995 s 9(3) (see PARA 79) for consultation with various English bodies does not apply: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

In the Environment Act 1995 s 42 (see PARA 98), references to the Secretary of State in the context of functions carried out under or in consequence of the Radioactive Substances Act 1993 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450 et seq) include the Welsh Ministers to the extent that those functions are functions of the Assembly: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

The requirements under the Environment Act 1995 s 46(3) (see PARA 92) and s 52(1) (see PARA 87) for the Environment Agency to send copy accounts and reports to the appropriate ministers have effect to require it additionally to send those documents to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

The functions of the Comptroller and Auditor General under the Environment Act 1995 s 46(4) (see PARA 92) and s 49(3), (4) (see PARA 95) are functions also of the Auditor General for Wales so far as they relate to any of the Welsh functions of the Environment Agency or to any funding provided to that Agency by the Assembly and in relation thereto s 46(4) has effect as if: (i) s 46(4)(b) empowered the Auditor General for Wales to report to the Welsh Ministers the result of any inspection carried out by him under s 46(4)(a); and (ii) it empowered the

Auditor General for Wales to carry out an examination under the Government of Wales Act 1998 s 145 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) in relation to the Environment Agency's Welsh functions or to any funding provided to that Agency by the Assembly as if that Agency were to that extent a body specified in Sch 17 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 724 et seq.

The Treasury consent requirement under the Environment Act 1995 s 45(2) (see PARA 91) and the Treasury approval requirements under s 44(1) (see PARA 90) and s 49(1), (2) (see PARA 95) continue in effect: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

The functions of the Secretary of State under the Environment Act 1995 s 41 (see PARA 97) and s 42 (see PARA 98) so far as relating to the making of regulations and the approval of charging schemes are exercisable only after consultation with the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2.

23 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Noise Act 1996 see PARA 848 et seq.

24 See the National Assembly for Wales (Transfer of Functions) Order 2005, SI 2005/1958. The functions transferred are those under or in relation to the Pollution Prevention and Control Act 1999 s 2 (see PARA 186), except in relation to offshore oil and gas exploration and exploitation (see PARA 585): National Assembly for Wales (Transfer of Functions) Order 2005, SI 2005/1958, art 3(1). In so far as any of the functions under art 3(1) are exercisable by the Secretary of State in relation to a cross-border body but which, by their nature, are not functions which can be specifically exercised in relation to Wales, such functions are exercisable in relation to that body concurrently with the Secretary of State: see art 3(2). For the purposes of art 3(1), functions of the Secretary of State under the Pollution Prevention and Control Act 1999 s 2 include any functions of the Secretary of State which are included in regulations having effect under s 2 (see PARAS 186, 187), and the power to confer functions on the Secretary of State or on a Minister of the Crown by any such regulations have effect as a power to confer such functions on the Assembly: National Assembly for Wales (Transfer of Functions) Order 2005, SI 2005/1958, art 3(3).

25 The National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 transferred functions under inter alia the Air Quality Standards Regulations 1989, SI 1989/317 (revoked) (see now also the Air Quality Standards Regulations 2007, SI 2007/64 (see PARAS 9, 10, 190)); the Environmental Information Regulations 1992, SI 1992/3240 (revoked) (see now the Environmental Information Regulations 2004, SI 2004/3391 (see PARA 55)); the Ozone Monitoring and Information Regulations 1994, SI 1994/440 (revoked) (see now the Air Quality Standards Regulations 2007, SI 2007/64 and the Air Quality Standards (Wales) Regulations 2007, SI 2007/717 (see PARAS 9, 10, 190)); the Waste Management Licensing Regulations 1994, SI 1994/1056 (mostly revoked) (see now the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARAS 6, 33, 34, 41, 42, 662 et seq); and the Special Waste Regulations 1996, SI 1996/972 (revoked) (see now the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894; and the Hazardous Waste (Wales) Regulations 2005, SI 2005/1806 (see PARAS 33, 34, 624, 705)). The National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, Sch 1 transferred functions under, inter alia, the Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263 (see PARAS 36, 1072); the Genetically Modified Organisms (Deliberate Release) Regulations 1992, SI 1992/3280 (revoked) (see now the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443; the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188; and PARAS 46, 793, 796-797, 807); and the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841 (see PARAS 23, 30, 1047).

26 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2; and the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 2.

UPDATE

59 The National Assembly for Wales and the Welsh Ministers

NOTE 2--2006 Act Sch 5 Pt 2 further amended: SI 2010/1212.

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B. ORDERS, REGULATIONS AND INQUIRIES

60. Provisional orders and special parliamentary procedure.

Various enactments empower the making of provisional orders, which have no force until they are confirmed by Parliament¹; but under certain enactments, which originally provided for the making of provisional orders, the orders are now subject instead to special parliamentary procedure².

1 Procedures for provisional orders authorised by enactments passed after 1 June 1934 are governed by the Local Government Act 1972 s 240: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 99. For such orders in earlier legislation see the Public Health Act 1875 s 297 (amended by SI 1962/409); and the Local Government Act 1933 s 285 (repealed).

2 See the Statutory Orders (Special Procedure) (Substitution) Order 1949, SI 1949/2393, art 2, Sch 1 (amended by the Sea Fish Industry Act 1962 Sch 4 Pt II; and by SI 1962/409). For examples of powers in which special parliamentary procedure is substituted for provisional order procedure see the Public Health Act 1936 s 6(4), s 9(2); and PARA 101. Orders made under the Public Health (Control of Disease) Act 1984 s 2(7) (see PARA 102) may also be subject to special parliamentary procedure. As to the adaptation of the procedure where necessary under the Public Health Act 1936 see s 316 (amended by SI 1949/2393).

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ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(i) The Secretary of State and the Welsh Ministers/B. ORDERS, REGULATIONS AND INQUIRIES/61. Orders, regulations and directions.

61. Orders, regulations and directions.

Any power conferred by the Control of Pollution Act 1974¹ to make an order or regulations: (1) includes power to make different provision by the order or regulations for different circumstances and to include in the order or regulations such incidental, supplemental and transitional provisions as the person making the order or regulations considers appropriate in connection with the order or regulations²; and (2) is exercisable³ by statutory instrument⁴.

Any power of the Secretary of State⁵ or the Welsh Ministers⁶ under the Environmental Protection Act 1990 to make regulations or orders is exercisable by statutory instrument⁷. Any power conferred by the Environmental Protection Act 1990 to give a direction includes power to vary or revoke the direction⁸. Any direction given under the Environmental Protection Act 1990 must be in writing⁹.

1 Ie except a power conferred by the Control of Pollution Act 1974 s 59 (repealed), s 63 (see PARAS 824, 825) or s 65(6) (see PARA 830).

2 Control of Pollution Act 1974 s 104(1)(a).

3 Ie except in the case of powers conferred by the Control of Pollution Act 1974 s 97: see PARA 64.

4 Control of Pollution Act 1974 s 104(1)(b). Statutory instruments made by virtue of s 104(1) are generally subject to annulment in pursuance of a resolution of either House of Parliament: see s 104(1) (amended by the Environment Act 1995 Sch 24).

5 As to the Secretary of State see PARA 58.

6 As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

7 Environmental Protection Act 1990 s 161(1) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 10(1), (2)). This provision does not apply to orders under the Environmental Protection Act 1990 s 72 (repealed) or Sch 3 para 4 (see **NUISANCE** vol 78 (2010) PARA 200): s 161(1) (as so amended).

A statutory instrument containing regulations under the Environmental Protection Act 1990 is subject to annulment in pursuance of a resolution of either House of Parliament: s 161(2). Section 161(2) does not, however, apply to a statutory instrument made solely by the Welsh Ministers: s 161(2A) (added by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 10(1), (3)).

As from a day to be appointed, the Environmental Protection Act 1990 s 161(2) also does not apply to a statutory instrument containing regulations under Sch 2AA para 11 (Sch 2AA prospectively added) (see PARA 704) to which Sch 2AA para 16(5) applies: s 161(2ZA) (prospectively added by the Climate Change Act 2008 Sch 5 Pt 2 para 4(1), (2)). At the date at which this volume states the law no such day had been appointed.

A statutory instrument containing an order under the Environmental Protection Act 1990 is generally subject to annulment: see s 161(3). Section 161(3) does not, however, apply to a statutory instrument: (1) which contains an order under s 78M(4) (see PARA 776); or (2) by reason only that it contains an order under s 128(3), s 130(4), s 131(3), s 138(2) (repealed) (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 524 et seq) or a commencement order under s 164(3); or (3) which is made solely by the Welsh Ministers: s 161(4) (amended by the Environment Act 1995 Sch 22 para 92; the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 10(1), (4); and the Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 125). As from a day to be appointed, a further head is added referring to a statutory instrument which contains an order under the Environmental Protection Act 1990 Sch 2AA para 2(3), 6(2) or 15(2) (see PARA 704), or an order under Sch 2AA para 5(1) (see PARA 704) to which para 16(3) applies: s 161(4) (prospectively amended by the Climate Change Act 2008 Sch 5 Pt 2 para 4(1), (3)). At the date at which this volume states the law no such day had been appointed.

8 Environmental Protection Act 1990 s 161(5).

9 Environmental Protection Act 1990 s 161(6).

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62. Power to give effect to international agreements.

Regulations may provide that certain statutory provisions¹ are to have effect with such modifications as may be prescribed in order to give effect to any European Union obligation or exercise any related right, or to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom² is for the time being a party³.

1 In any provision of the Control of Pollution Act 1974 (except s 102), the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) (see PARA 159 et seq), Pt II (ss 29-78) (see PARA 620 et seq), Pt VI (ss 106-127) (see PARA 793 et seq), s 140 (see PARAS 789-790), s 141 (see PARA 716), s 142 (see PARA 791), and the provisions of the Radioactive Substances Act 1993 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450 et seq). As to the prospective repeal of the Environmental Protection Act 1990 Pt I see PARA 159 note 2.

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 See the Control of Pollution Act 1974 s 102(1); and the Environmental Protection Act 1990 s 156 (amended by the Radioactive Substances Act 1993 Sch 4 para 9). As to the regulations made see the Environmental Protection Act 1990 (Modification of section 112) Regulations 1992, SI 1992/2617 (see PARA 798); the Waste Management Licensing Regulations 1994, SI 1994/1056 (now mostly revoked) (see now the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538) (see PARA 662 et seq); the Environmental Protection Act 1990 (Extension of Section 140) Regulations 1999, SI 1999/396 (see also PARA 35); the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188 (see PARAS 793, 796-797, 807); and the Waste Management (England and Wales) Regulations 2006, SI 2006/937 (see eg PARAS 620, 624, 655, 709).

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63. Holding of inquiries.

The Secretary of State¹ may cause a local inquiry to be held in any case where he is authorised by the Public Health Act 1936 to determine any difference, to make any order, to frame any scheme, to give any consent, confirmation, sanction or approval or otherwise to act under that Act². He may also cause such an inquiry to be held where he deems it advisable in relation to any matter concerning the public health in any place³. He has similar powers under the Public Health (Control of Disease) Act 1984⁴.

Under the Control of Pollution Act 1974, the Secretary of State may cause a local inquiry to be held in any case in which he considers it appropriate for such an inquiry to be held either in connection with a provision of that Act or with a view to preventing or dealing with pollution other than air pollution or noise at any place⁵. There is also a power to hold inquiries under the Clean Air Act 1993 in any case in which he considers it appropriate for an inquiry to be held either in connection with a provision of that Act or with a view to preventing or dealing with air pollution at any place⁶. Certain general provisions⁷ apply to such inquiries⁸.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Public Health Act 1936 s 318.

3 Public Health Act 1936 s 318.

4 See the Public Health (Control of Disease) Act 1984 s 70. This provision is repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 25, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed.

5 Control of Pollution Act 1974 s 96(1) (amended by the Clean Air Act 1993 Sch 4 para 2).

6 See the Clean Air Act 1993 s 59(1); and PARA 208.

7 See the Local Government Act 1972 s 250; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 105. See also the Tribunals, Courts and Enforcement Act 2007; and **ADMINISTRATIVE LAW**.

8 See the Control of Pollution Act 1974 s 96(2) (amended by the Water Act 1989 Sch 27 Pt I); and the Clean Air Act 1993 s 59(2).

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C. ENFORCEMENT OF DUTIES OF DEFAULTING AUTHORITIES

64. Power to enforce or transfer powers in default.

If the Secretary of State¹ is satisfied that any council² or joint board³ has failed to discharge its functions under the Public Health Act 1936 in any case where it ought to have done so, he may make an order declaring that body to be in default and directing it to discharge such of its functions, and in such manner and within such time or times, as may be specified in the order⁴. If the order is not complied with, then, in lieu of enforcing it by mandatory order⁵ or otherwise, the Secretary of State may make an order transferring to himself such of the body's functions as may be specified in his order⁶. A neglect of duty which may be subject to these provisions gives no right of action to an individual, unless he has a cause of action independently of the statute⁷. The Secretary of State may at any time by a subsequent order vary or revoke an order transferring the functions of a defaulting authority, without prejudice to the validity of anything previously done under it⁸.

The Secretary of State has similar default powers under the Control of Pollution Act 1974⁹, the Public Health (Control of Disease) Act 1984¹⁰ and the Clean Air Act 1993¹¹.

Provision is also made for the exercise of local authority functions in relation to rats and mice under the Prevention of Pests Act 1949 where those functions are not being satisfactorily performed by the authority¹².

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the councils whose duty it is to carry the Public Health Act 1936 into effect see PARAS 1 note 14, 99 et seq.

3 As to joint boards see PARA 101.

4 See the Public Health Act 1936 s 322(2) (amended by the Local Government (Miscellaneous Provisions) Act 1976 s 27(5); and the Public Health (Control of Disease) Act 1984 Sch 3).

5 As to mandatory orders (formerly orders of mandamus) see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 133 et seq. For examples of procedure by mandamus see *R v Staines Union*, *R v Staines Local Board* (1893) 62 LJQB 540, DC; *R v Sunbury-on-Thames UDC* (1896) Times, 4 June, 20 July, DC; *R v Worcester Corpn* (1905) 69 JP 296, DC.

6 See the Public Health Act 1936 s 322(3) (amended by the Local Government (Miscellaneous Provisions) Act 1976 Sch 2). The expenses of discharging the transferred functions, as certified by the Secretary of State, must be paid to him by the body in default and are recoverable as a debt due to the Crown: see the Public Health Act 1936 s 324(1) (s 324(1), (2) amended by the Public Health (Control of Disease) Act 1984 Sch 3). The payment of such expenses is a purpose for which the body may borrow money under statutory powers: see the Public Health Act 1936 s 324(2) (as so amended).

7 *Robinson v Workington Corpn* [1897] 1 QB 619, CA; *Pasmore v Oswaldtwistle UDC* [1898] AC 387, HL; *Jones v Barking UDC* (1898) 15 TLR 92, CA; *Earl of Harrington v Derby Corpn* [1905] 1 Ch 205; *Hesketh v Birmingham Corpn* [1924] 1 KB 260, CA; *Clark v Epsom RDC* [1929] 1 Ch 287. The provision of such a remedy cannot take away a court's jurisdiction where a legal wrong is done: *Glossop v Heston and Isleworth Local Board* (1878) 12 ChD 102 at 116, CA, per James LJ, and at 129 per Cotton LJ; contrast *Robinson v Workington Corpn* above at 621 per Lord Esher MR.

There may be liability in negligence or nuisance: see **LOCAL GOVERNMENT; NEGLIGENCE; NUISANCE**.

8 See the Public Health Act 1936 s 325 (amended by the Public Health (Control of Disease) Act 1984 Sch 3). When an order under the Public Health Act 1936 is revoked, the Secretary of State may make, either by the revoking order or by a subsequent order, such provision as appears to him desirable in respect of the transfer, vesting and discharge of any property or liabilities acquired or incurred by him in discharging any of the transferred functions: s 325.

9 See the Control of Pollution Act 1974 s 97.

10 See the Public Health (Control of Disease) Act 1984 s 71. This provision is prospectively substituted by the Health and Social Care Act 2008 Sch 11 paras 1, 26 but at the date at which this volume states the law the substitution was in force (from 21 July 2008) only in so far as it confers power to make subordinate legislation.

11 See the Clean Air Act 1993 s 60; and PARA 209.

12 See the Prevention of Damage by Pests Act 1949 s 12; and PARA 864.

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D. DELEGATION OF FUNCTIONS

65. Delegation of certain functions.

Under the Environment Act 1995, the Secretary of State¹ may: (1) appoint any person to exercise on his behalf, with or without payment, certain functions relating to appeals²; or (2) refer certain items³ relating to appeals to such person as the Secretary of State may appoint for the purpose, with or without payment⁴.

¹ As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

² Environment Act 1995 s 114(1)(a). The functions to which this provision applies include any of the Secretary of State's functions of determining an appeal under the Control of Pollution (Amendment) Act 1989 s 4 (see PARA 711), the Environmental Protection Act 1990 s 15 (prospectively repealed) (see PARA 176), s 22(5) (prospectively repealed) (see PARA 180), s 78L (see PARA 772) or s 78T (see PARA 782), the Waste Management Licensing Regulations 1994, SI 1994/1056, Sch 5 para 6, regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARAS 186-188) or any matter involved in such an appeal: see the Environment Act 1995 s 114(2)(a)(ii), (iii), (vii), (viii) (amended by SI 2000/1973; and SI 2007/3538). As from a day to be appointed, this provision is amended so as to remove the reference to the Environmental Protection Act 1990 ss 15, 22(5): see the Pollution Prevention and Control Act 1999 s 6(2), Sch 3. At the date at which this volume states the law no such day had been appointed.

As to the appointment of a person under these provisions see further the Environment Act 1995 s 114(4), Sch 20 paras 1, 2. As to the powers of an appointed person see Sch 20 para 3. As to the holding of local inquiries and other hearings by such a person see Sch 20 paras 4, 5 (Sch 20 para 4 amended by SI 2000/1973; and SI 2007/3538). As to the revocation of appointments and the making of new appointments see the Environment Act 1995 Sch 20 para 6. Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates must be treated for all purposes as done or omitted to be done by the Secretary of State in his capacity as such (Sch 20 para 7(1)), but this provision does not apply for the purposes of so much of any contract made between the Secretary of State and the appointed person as relates to the exercise of the function or for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done (Sch 20 para 7(2)).

³ The items to which this provision applies are any matters involved in an appeal falling within the Environment Act 1995 s 114(2)(a) (see note 2): s 114(3)(a).

⁴ Environment Act 1995 s 114(1)(b).

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E. FINANCIAL PROVISIONS

66. Financial assistance for environmental purposes.

The Secretary of State¹ may, with the consent of the Treasury², give financial assistance to, or for the purposes of, certain environmental organisations, schemes, programmes or international agreements³. Financial assistance may be given in respect of particular activities or generally in respect of all or some part of the activities carried on or supported by the recipient⁴. Financial assistance is to be given in such form and on such terms as the Secretary of State may think fit⁵.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

3 See the Environmental Protection Act 1990 s 153(1) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 5 Pt 8; SI 1991/682; SI 1991/1179; SI 1992/654; SI 1993/1062; SI 1993/1518; SI 1995/150; SI 1995/554; SI 1995/1085; SI 1995/3099; SI 1996/505; SI 1996/1431; SI 1997/651; SI 1998/538; SI 1998/1001; SI 1998/3234; SI 2000/207; SI 2000/2211; SI 2002/1686; SI 2002/2021; SI 2003/714; SI 2003/2119; SI 2005/1805; SI 2006/1735; SI 2007/1671; SI 2008/3243; and SI 2009/1506). The Secretary of State may, by order, vary this provision by adding to or deleting from it any description of organisation, scheme, programme or international agreement whose purposes relate to the protection, improvement or better understanding of the environment: Environmental Protection Act 1990 s 153(4). See also the Control of Pollution Act 1974 s 102(2).

Employment with the Groundwork Foundation is, and is deemed always to have been, included among the kinds of employment to which a superannuation scheme under the Superannuation Act 1972 s 1 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 567 et seq) can apply: see the Environmental Protection Act 1990 s 154 (amended by the Superannuation Act 1972 Sch 1).

4 Environmental Protection Act 1990 s 153(2).

5 Environmental Protection Act 1990 s 153(3). In particular, assistance may be given by making grants (whether or not repayable), loans or guarantees to, or by incurring expenditure, or providing services, staff or equipment for the benefit of, the recipient: see s 153(3).

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67. Expenses and receipts.

There must be paid out of money provided by Parliament¹: (1) any expenses incurred by the Secretary of State² for the purposes of the Control of Pollution Act 1974³; and (2) any increase attributable to the provisions of that Act in the sums payable under any other Act out of money so provided⁴. Any sums received by the Secretary of State by virtue of the Control of Pollution Act 1974 must be paid into the Consolidated Fund⁵.

Similarly, there must be paid out of money provided by Parliament⁶: (a) any administrative or other expenses incurred by any Minister of the Crown in consequence of the provisions of the Environmental Protection Act 1990⁷; and (b) any increase attributable to that Act in the sums payable out of money so provided under any other Act⁸. Any fees or other sums received by any Minister of the Crown by virtue of any provisions of the Environmental Protection Act 1990 must be paid into the Consolidated Fund⁹.

1 This provision does not apply in so far as such a sum is payable by the National Assembly for Wales. As to the National Assembly for Wales see note 2; PARA 59; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Control of Pollution Act 1974 s 89(1)(a).

4 Control of Pollution Act 1974 s 89(1)(b).

5 Control of Pollution Act 1974 s 89(2). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.

6 See note 1.

7 Environmental Protection Act 1990 s 163(1)(a).

8 Environmental Protection Act 1990 s 163(1)(b).

9 Environmental Protection Act 1990 s 163(2).

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(ii) The Environment Agency

A. INTRODUCTION

68. Establishment and membership.

The Environment Agency was established under the Environment Act 1995 to cover the whole of England and Wales¹.

The Agency is a body corporate² consisting of not less than eight nor more than 15 members, all³ of whom are appointed by the Secretary of State⁴. One of the members is designated by the Secretary of State as chairman and another as deputy chairman of the Agency⁵. In appointing a person to be a member of the Agency, regard must be had to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the Agency⁶.

The Agency must pay its members such remuneration and such travelling and other allowances as may be determined by the appropriate minister⁷. Members of the Agency are disqualified for membership of the House of Commons⁸. The validity of any proceedings of the Agency is not affected by a vacancy among the members or a defect in the appointment of any member⁹.

The Agency may appoint such officers and employees as it may determine¹⁰ but no member or other person may be appointed by the Agency to act as chief executive of the Agency unless the Secretary of State has consented to the appointment of that person¹¹.

The Agency is not to be regarded¹² as the servant or agent of the Crown, nor as enjoying any status, immunity or privilege of the Crown, nor as exempt, by virtue of any connection with the Crown, from any tax, duty, rate, levy or other charge whatsoever, whether general or local¹³. The Agency's property is not regarded as property of, or property held on behalf of, the Crown¹⁴.

The Agency may provide houses and other buildings for the use of persons employed by it and recreation grounds for such persons¹⁵.

1 In Welsh the Environment Agency is known as Asiantaeth yr Amgylchedd: Environment Act 1995 s 1(1). The Environment Act 1995 contains numerous references to 'the new agency', which means either the Agency or, in relation to Scotland, the Scottish Environment Protection Agency (SEPA): s 56(1). Throughout this title, these references have been replaced, as appropriate, by references to 'the Environment Agency'. For a general review of the powers and functions of the Environment Agency see Gallagher 'The Environment Agency' [1996] JPL Occasional Papers No 24 pp 6-10.

The Agency, which took over functions of various bodies, including the National Rivers Authority (see PARA 70), is a national body covering England and Wales and any regional offices are a legacy from the predecessor bodies, based on the former water authorities. As to the former water authorities and the privatisation of the water industry see **WATER AND WATERWAYS** vol 100 (2009) PARA 108.

The Agency's website was, at the date at which this volume states the law, www.environment-agency.gov.uk. In particular reference may be made to the Agency's strategy *Creating a better place 2010-2015*.

2 Environment Act 1995 s 1(1).

3 Previously three of these were appointed by the Minister of Agriculture, Fisheries and Food but since the dissolution of the Ministry (see PARA 58) all are appointed by the Secretary of State. As to the Secretary of State

see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Environment Act 1995 s 1(2).

A member holds and vacates office in accordance with the terms of his appointment and on ceasing to be a member is eligible for reappointment: s 1(6), Sch 1 para 1(1). He may at any time resign his office by giving notice to the appropriate minister: Sch 1 para 1(2). The appropriate minister may remove a member from office if he is satisfied: (1) that the member has been absent from meetings of the Agency for a period of more than three months without the Agency's permission; (2) that the member has been adjudged bankrupt, that his estate has been sequestrated or that he has made a composition or arrangement with, or granted a trust deed for, his creditors; or (3) that the member is unable or unfit to carry out the functions of a member: Sch 1 para 1(3). 'Member', except where the context otherwise requires, means any member of the Agency (including the chairman and deputy chairman): Sch 1 para 12.

For the purposes of Sch 1, 'appropriate minister', in relation to any person who is or has been a member, means the Secretary of State: see Sch 1 para 12. For the purposes of Pt I (ss 1-56), 'appropriate minister' means the Secretary of State: see s 56(1). These provisions also refer to the Minister of Agriculture, Fisheries and Food, but his functions are now the responsibility of the Secretary of State (see PARA 58 note 1).

5 Environment Act 1995 s 1(3). The chairman or deputy chairman holds office as such unless and until he resigns that office by giving notice to the Secretary of State, or he ceases to be a member, and on ceasing to be chairman or deputy chairman he is eligible for further designation as such in accordance with s 1(3) at any time when he is a member: Sch 1 para 2.

6 Environment Act 1995 s 1(4). As to the functions of the Agency see PARA 73 et seq.

7 Environment Act 1995 Sch 1 para 3(1). If so required by the appropriate minister, the Agency must: (1) pay such pension, allowances or gratuities as may be determined by that minister to or in respect of a person who is or has been a member; (2) make such payments as may be determined by that minister towards provision for the payment of a pension, allowances or gratuities to or in respect of a person who is or has been a member; or (3) provide and maintain such schemes, whether contributory or not, as may be determined by that minister for the payment of pensions, allowances or gratuities to or in respect of persons who are or have been members: Sch 1 para 3(2). If, when any member ceases to hold office, the appropriate minister determines that there are special circumstances which make it right that that member ought to receive compensation, the Agency must pay to him a sum by way of compensation of such amount as may be so determined: Sch 1 para 3(3).

8 House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II (amended by the Environment Act 1995 Sch 22 para 31).

9 Environment Act 1995 Sch 1 para 8.

10 Environment Act 1995 Sch 1 para 4(1).

11 Environment Act 1995 Sch 1 para 4(2). The Agency may: (1) pay such pensions, allowances or gratuities to or in respect of any persons who are or have been its officers or employees as it may, with the approval of the Secretary of State, determine; (2) make such payments as it may so determine towards provision for the payment of pensions, allowances or gratuities to or in respect of any such persons; and (3) provide and maintain such schemes as it may so determine, whether contributory or not, for the payment of pensions, allowances or gratuities to or in respect of any such persons: Sch 1 para 4(3). Any reference in Sch 1 para 4(3) to pensions, allowances or gratuities to or in respect of any such persons as are there mentioned includes a reference to pensions, allowances or gratuities by way of compensation to, or in respect of, any of the Agency's officers or employees who suffer loss of office or employment or loss or diminution of emoluments: Sch 1 para 4(4).

12 le subject to the Environment Act 1995 s 38: see PARA 86.

13 Environment Act 1995 s 1(5)(a), (b).

14 Environment Act 1995 s 1(5).

15 See the Environment Act 1995 s 10(5).

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69. Proceedings of the Environment Agency.

The Environment Agency¹ may regulate its own procedure, including quorum². Anything authorised or required by or under any enactment to be done by the Agency may be done by any member³, officer or employee of the Agency who has been authorised for the purpose, whether generally or specially, by the Agency, or by any committee or sub-committee of the Agency which has been so authorised⁴.

A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting⁵ of the Agency must disclose the nature of his interest to the meeting; and, where such a disclosure is made, the disclosure must be recorded in the minutes of the meeting, and the member must not take any part in any deliberation or decision of the Agency, or of its committees or sub-committees, with respect to that matter⁶. The Secretary of State may, however, remove any disability so imposed⁷ in any case where the number of members of the Agency so disabled at any one time would be so great a proportion of the whole as to impede the transaction of business⁸.

Minutes must be kept of proceedings of the Agency, of its committees and of its sub-committees⁹.

The application of the Agency's seal must be authenticated by the signature¹⁰ of any member, officer or employee of the Agency who has been authorised for the purpose, whether generally or specially, by the Agency¹¹.

Any document which the Agency is authorised or required by or under any enactment to serve, make or issue may be signed on behalf of the Agency by any member, officer or employee of the Agency who has been authorised for the purpose, whether generally or specially, by the Agency¹². Any notice which is required or authorised, by or under any provision of any other Act, to be given, served or issued by, to or on the Agency must be in writing¹³.

1 As to the establishment of the Environment Agency see PARA 68.

2 Environment Act 1995 s 1(6), Sch 1 para 5. This is subject to Sch 1 paras 5-11 (see the text and notes 3-13) and to the Water Resources Act 1991 s 106 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 573): Environment Act 1995 Sch 1 para 5.

3 As to the meaning of 'member' see PARA 68 note 4.

4 Environment Act 1995 Sch 1 para 6. This provision is expressed to be subject to the Water Resources Act 1991 s 106 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 573): see the Environment Act 1995 Sch 1 para 6.

5 For these purposes, any reference to a meeting of the Agency includes a reference to a meeting of any committee or sub-committee of the Agency: Environment Act 1995 Sch 1 para 7(7).

6 Environment Act 1995 Sch 1 para 7(1). For these purposes, a general notification given at a meeting of the Agency by a member to the effect that he is a member of a specified company or firm, and that he is to be regarded as interested in any matter involving that company or firm, is to be regarded as a sufficient disclosure of his interest in relation to any such matter: Sch 1 para 7(2). A member need not attend in person at a meeting of the Agency in order to make a disclosure which he is so required to make if he takes reasonable steps to secure that the disclosure is made by a notice which is read and considered at the meeting: Sch 1 para 7(3).

7 Ie subject to such conditions as he considers appropriate: Environment Act 1995 Sch 1 para 7(4).

8 Environment Act 1995 Sch 1 para 7(4). This power includes power to remove, either indefinitely or for any period, a disability which would otherwise attach to any member, or members of any description, by reason of such interests, and in respect of such matters, as may be specified or described by the Secretary of State: Sch 1 para 7(5). Nothing in Sch 1 para 7 precludes any member from taking part in the consideration of, or voting on, any question whether an application should be made to the Secretary of State for the exercise of the power under Sch 1 para 7(4): Sch 1 para 7(6). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Environment Act 1995 Sch 1 para 9(1). Minutes of any such proceedings are evidence of those proceedings if they are signed by a person purporting to have acted as chairman of the proceedings to which the minutes relate or of any subsequent proceedings in the course of which the minutes were approved as a correct record: Sch 1 para 9(2). Where minutes of any such proceedings have been so signed, those proceedings are deemed to have been validly convened and constituted unless the contrary is shown: Sch 1 para 9(3).

10 This reference to the signature of a person includes a reference to a facsimile of a signature, by whatever process reproduced; and 'signed' is to be construed accordingly: Environment Act 1995 Sch 1 para 10(2).

11 Environment Act 1995 Sch 1 para 10(1).

12 Environment Act 1995 Sch 1 para 11(1). Every document purporting to be an instrument made or issued by or on behalf of the Agency and to be duly executed under the seal of the Agency, or to be signed or executed by a person authorised by the Agency for the purpose, must be received in evidence and treated, without further proof, as being so made or issued unless the contrary is shown: Sch 1 para 11(2).

13 Environment Act 1995 Sch 1 para 11(3).

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70. Transfer of functions.

On the transfer date¹, certain functions of the National Rivers Authority², waste regulation authorities³, disposal authorities⁴, and the Secretary of State⁵ were transferred to the Environment Agency⁶, and the National Rivers Authority and the London Waste Regulation Authority were abolished⁷. The Agency now has functions with respect to, inter alia, pollution control⁸, water resources⁹ and flood defence¹⁰, and environmental duties with respect to sites of special interest¹¹, as well as general environmental and recreational duties¹². Its principal aim and objectives, and incidental functions, are set out in the Environment Act 1995¹³.

1 'Transfer date' means such date as the Secretary of State may by order made by statutory instrument appoint as the transfer date for the purposes of the Environment Act 1995 Pt I (ss 1-56); and different dates may be appointed for the purposes of that Part as it applies for or in connection with transfers under or by virtue of Pt I Ch I (ss 1-19) or under or by virtue of Pt I Ch II (ss 20-36) (Scottish Environment Protection Agency): s 56(1). As to the order that has been made see the Environment Agency (Transfer Date) Order 1996, SI 1996/234, which brought the transfer provisions in relation to the Environment Agency into force on 1 April 1996. The Environment Act 1995 s 2, relating to transfer of functions, was also brought into force on 1 April 1996: Environment Act 1995 (Commencement No 5) Order 1996, SI 1996/186, art 3. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the establishment of the Environment Agency see PARA 68.

2 See the Environment Act 1995 s 2(1)(a) (amended by SI 2009/463). As to the functions transferred from the National Rivers Authority to the Environment Agency see **WATER AND WATERWAYS** vol 100 (2009) PARA 12.

3 See the Environment Act 1995 s 2(1)(b). The functions that were transferred were those conferred or imposed on waste regulation authorities by or under the Control of Pollution (Amendment) Act 1989 or the Environmental Protection Act 1990 Pt II (ss 29-78) or assigned to them by or under any other enactment apart from the Environment Act 1995: s 2(1)(b). 'Waste regulation authority', in the application of Pt I in relation to the Agency, means any authority in England or Wales which, by virtue of the Environmental Protection Act 1990 s 30(1) (see PARA 620), is a waste regulation authority for the purposes of Pt II: Environment Act 1995 s 56(1). As to waste regulation authorities see PARA 620 note 6.

4 See the Environment Act 1995 s 2(1)(c). The functions transferred were those under or by virtue of the waste regulation provisions of the Control of Pollution Act 1974: Environment Act 1995 s 2(1)(c). 'Disposal authority' in the application of Pt I in relation to the Agency, has the same meaning as it has in the Control of Pollution Act 1974 Pt I (ss 11-30) (see PARA 620): Environment Act 1995 s 56(1). As to waste disposal authorities see PARA 620 note 7.

5 See the Environment Act 1995 s 2(1)(h), (2). The functions of the Secretary of State that were transferred are:

- 4 (1) so far as exercisable in relation to England and Wales, his functions under the Radioactive Substances Act 1993 s 30(1) (power to dispose of radioactive waste) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1461) (Environment Act 1995 s 2(2)(a));
- 5 (2) his functions under the Water Industry Act 1991 Pt IV Ch III (ss 118-141) in relation to special category effluent, within the meaning of that Chapter, other than any function of making regulations or of making orders under s 139 (see PARA 1047 et seq) (Environment Act 1995 s 2(2)(b));
- 6 (3) so far as exercisable in relation to England and Wales, the functions conferred or imposed on him by virtue of his being, for the purposes of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54), the authority which is by any of the relevant statutory provisions made responsible for the enforcement of the Alkali etc Works Regulation Act 1906 (repealed) and the Health and Safety at Work etc Act 1974 s 5 (repealed) (Environment Act 1995 s 2(2)(c));

- 7 (4) so far as exercisable in relation to England and Wales, his functions under, or under regulations made by virtue of, the Alkali etc Works Regulation Act 1906 s 9 (registration of works) (repealed), other than any functions of his as an appellate authority or any function of making regulations (Environment Act 1995 s 2(2)(d));
- 8 (5) so far as exercisable in relation to England and Wales, his functions under the Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, regs 7(1), 8(2), Sch 2 para 2(2)(c) (which relate to the provision of information and the testing of soil) (see PARA 1072) (Environment Act 1995 s 2(2)(e)).

6 See the Environment Act 1995 s 2(1). Also transferred were the functions of the chief inspector for England and Wales constituted under the Environmental Protection Act 1990 s 16(3) (repealed): see the Environment Act 1995 s 2(1)(d). Similarly other duties were transferred from the chief inspector under the Radioactive Substances Act 1993, the Alkali etc Works Regulations Act 1906 (repealed) and the Health and Safety at Work etc Act 1974 Pt I: see the Environment Act 1995 s 2(1)(e)-(g).

7 See the Environment Act 1995 s 2(3) (repealed).

8 See the Environment Act 1995 s 5; and PARA 75. As to pollution control generally see PARA 158 et seq.

9 See the Environment Act 1995 s 6; and PARA 76. As to water resources generally see **WATER AND WATERWAYS** vol 100 (2009) PARA 187 et seq.

10 See the Environment Act 1995 ss 14-19; and **WATER AND WATERWAYS** vol 101 (2009) PARA 559 et seq.

11 See the Environment Act 1995 s 8; and PARA 78.

12 See the Environment Act 1995 ss 7, 9; and PARAS 77, 79.

13 See the Environment Act 1995 ss 4, 10; and PARAS 73, 80.

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71. Transfer of property, rights and liabilities.

On the transfer date¹, the property, rights and liabilities of the National Rivers Authority and the London Waste Regulation Authority were transferred to and vested in the Environment Agency². The Secretary of State³ had power before the transfer date to make a scheme for the transfer to the Agency of such of his property, rights and liabilities, or the property, rights and liabilities of any of certain inspectors or chief inspectors⁴, as appeared to him appropriate to be so transferred in consequence of the transfer of any functions to the Agency by virtue of any of the relevant⁵ statutory provisions⁶. Any property, rights or liabilities which were the subject of such a scheme were transferred to and vested in the Agency by and in accordance with the scheme⁷. Waste regulation authorities⁸, other than the London Waste Regulation Authority, were under a duty to make schemes after consultation with the Agency for the transfer of such of their property, rights and liabilities as appeared to them to be appropriate to be so transferred and to submit the schemes to the Secretary of State for his approval⁹. If at any time after a transfer scheme has come into force the Secretary of State considers it appropriate to do so, he may by order¹⁰ provide that the scheme is to be deemed to have come into force with specified modifications¹¹. No transfer effected by the above provisions gave rise to any liability to stamp duty¹².

The abolition of the National Rivers Authority or the London Waste Regulation Authority does not affect the validity of anything done¹³ by that authority before the transfer date¹⁴. Anything which at the transfer date was in the process of being done by or in relation to a transferor in the exercise of, or in connection with, any of the transferred functions¹⁵ might thereafter be continued by or in relation to the transferee¹⁶. Anything done by or in relation to a transferor before the transfer date in the exercise of, or otherwise in connection with, any of the transferred functions is, so far as is required for continuing its effect on and after the transfer date, to have effect as if done by or in relation to the transferee¹⁷. This applies in particular to:

- 13 (1) any decision, determination, declaration, designation, agreement or instrument made by a transferor¹⁸;
- 14 (2) any regulations or byelaws made by a transferor¹⁹;
- 15 (3) any licence, permission, consent, approval, authorisation, exemption, dispensation or relaxation granted by or to a transferor²⁰;
- 16 (4) any notice, direction or certificate given by or to a transferor²¹;
- 17 (5) any application, request, proposal or objection made by or to a transferor²²;
- 18 (6) any condition or requirement imposed by or on a transferor²³;
- 19 (7) any fee or charge paid by or to a transferor²⁴;
- 20 (8) any appeal allowed by or in favour of or against a transferor²⁵;
- 21 (9) any proceedings instituted by or against a transferor²⁶.

Any reference to a transferor in any document constituting or relating to any thing to which the above provisions apply is, so far as is required for giving effect to those provisions, to be construed as a reference to the transferee²⁷.

The above provisions are without prejudice to any provision made by the Environment Act 1995 in relation to any particular functions and are not to be construed as continuing in force any contract of employment made by a transferor²⁸. The Secretary of State may, in relation to any

particular functions of the Agency, by order²⁹ exclude, modify or supplement any of the above provisions or make such other transitional provisions as he thinks necessary or expedient³⁰.

1 le 1 April 1996: see PARA 70 note 1.

2 Environment Act 1995 s 3(1)(a). As to the abolition of the National Rivers Authority and the London Waste Regulation Authority see PARA 70. As to the establishment of the Environment Agency see PARA 68.

3 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 le the inspectors and chief inspectors mentioned in the Environment Act 1995 s 2(1): s 3(2)(b) (repealed). Those inspectors are: (1) the chief inspector for England and Wales constituted under the Environmental Protection Act 1990 s 16(3) (repealed); (2) the chief inspector for England and Wales appointed under the Radioactive Substances Act 1993 s 4(2)(a) (repealed); (3) the chief, or any other, inspector within the meaning of the Alkali etc Works Regulation Act 1906 (repealed); (4) inspectors appointed under the Health and Safety at Work etc Act 1974 s 19 by the Secretary of State in his capacity as the enforcing authority responsible in relation to England and Wales for the enforcement of s 5 (repealed) and of the Alkali etc Works Regulation Act 1906 (repealed): see the Environment Act 1995 s 2(1)(d)-(g).

5 le by virtue of any of the provisions of the Environment Act 1995 s 2(1)(d)-(h). See note 4.

6 Environment Act 1995 s 3(2) (repealed).

7 Environment Act 1995 s 3(1)(b)(i).

8 As to the meaning of 'waste regulation authority' see PARA 70 note 3.

9 See the Environment Act 1995 s 3(1)(b)(ii). As to the property, rights and liabilities which might be transferred by a transfer scheme under s 3 see s 3(8), Sch 2 para 2. As to contracts of employment see Sch 2 para 3 (amended by the Employment Rights Act 1996 Sch 1 para 68). As to the methods of defining the property, rights and liabilities to be transferred see the Environment Act 1995 Sch 2 para 4. No consideration was to be provided in respect of the transfer: see Sch 2 para 9. As to the division of property, rights and liabilities see Sch 2 para 5; and as to the making of incidental, supplemental and consequential provision see Sch 2 para 6. As to the perfection of the vesting of foreign property, rights and liabilities see Sch 2 para 12. As to the continuity of certain transactions see Sch 2 para 10. As to remedies see Sch 2 para 11. As to the provision of information and assistance to the Secretary of State and the Environment Agency in connection with transfer schemes see Sch 2 para 8. As to the arrangements for the transfer from the waste regulation authorities see the Department of the Environment Circular 15/95 *Transfer of Property, Rights and Liabilities from Waste Regulatory Authorities to the Environment Agency*.

10 The order is to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: see the Environment Act 1995 Sch 2 para 7(4). It may only be made after consultation with the Agency and the transferor body: see Sch 2 para 7(3). As to the content of the order see Sch 2 para 7(2).

11 Environment Act 1995 Sch 2 para 7(1). 'Modification' includes additions, alterations and omissions; and cognate expressions are to be construed accordingly: s 124(1).

12 Environment Act 1995 s 119(1). Stamp duty is not chargeable on any transfer scheme or on any instrument or agreement certified to the Commissioners for Her Majesty's Revenue and Customs by the Secretary of State as made in pursuance of a transfer scheme: s 119(2), (4) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). No such transfer scheme or instrument is, however, to be taken to be duly stamped unless it has, in accordance with the Stamp Act 1891 s 12, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped, or it is stamped with the duty to which it would otherwise be liable (see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1111): Environment Act 1995 s 119(3). As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

13 For these purposes, any reference to anything done by or in relation to a transferor includes a reference to anything which, by virtue of any enactment, is treated as having been done by or in relation to that transferor: Environment Act 1995 s 55(5). 'Transferor' means any body or person any or all of whose functions become, by virtue of any provision made by or under the Environment Act 1995, functions of the Agency: s 55(10).

14 Environment Act 1995 s 55(1).

15 'Transferred functions' means any functions which, by virtue of any provision made by or under the Environment Act 1995, become functions of the Agency: s 55(10).

16 Environment Act 1995 s 55(2). 'Transferee', in the case of any transferred functions, means the Agency whose functions they become by virtue of any provisions made by or under the Environment Act 1995: s 55(10).

17 Environment Act 1995 s 55(3).

18 Environment Act 1995 s 55(4)(a).

19 Environment Act 1995 s 55(4)(b).

20 Environment Act 1995 s 55(4)(c).

21 Environment Act 1995 s 55(4)(d).

22 Environment Act 1995 s 55(4)(e).

23 Environment Act 1995 s 55(4)(f).

24 Environment Act 1995 s 55(4)(g).

25 Environment Act 1995 s 55(4)(h).

26 Environment Act 1995 s 55(4)(j).

27 Environment Act 1995 s 55(6).

28 Environment Act 1995 s 55(7).

29 The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Environment Act 1995 s 55(9).

30 Environment Act 1995 s 55(7).

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B. GENERAL FUNCTIONS AND DUTIES

72. General environmental duties.

Under the Environment Act 1995, the Environment Agency has general and specific duties intended to benefit the environment¹. The Agency's principal aim, subject to other statutory provisions and taking into account any likely costs, is to discharge its functions so to protect or enhance the environment taken as a whole as to make a contribution towards achieving sustainable development². The Agency's specific environmental duties reflect their origins in earlier statutes relating to water³. They now apply to the general pollution control and waste regulation functions of the Agency, although a distinction is drawn between environmental duties in relation to pollution (including water pollution) control⁴ and other agency functions⁵. Water and sewerage undertakers⁶, land drainage bodies⁷ and local authorities⁸ have very similar duties. The ministers⁹ have power to issue and by order approve codes of practice giving practical guidance to the Agency and other bodies as to the exercise of these duties and to promote desirable practices in relation to them¹⁰.

1 See the Environment Act 1995 ss 6-9; and PARAS 76-79. As to the establishment of the Environment Agency see PARA 68.

2 See the Environment Act 1995 s 4(1); and PARA 73.

3 See eg the Water Act 1989 ss 8-10 (repealed); and the Water Resources Act 1991 ss 2(2), 16-18 (repealed). As to the transfer of functions of the National Rivers Authority to the Environment Agency see PARA 70.

4 As to the meanings of 'pollution control powers' and 'pollution control functions' see PARA 75.

5 See the Environment Act 1995 s 7(1); and PARA 77. The duty in connection with pollution control requires the Agency to 'have regard to' various environmental considerations, whereas in the case of all other functions the duty is to 'further' them.

6 See the Water Industry Act 1991 ss 3-5; and **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq. As to sewerage undertakers see also PARA 999.

7 See the Land Drainage Act 1991 ss 61A-61E; and **WATER AND WATERWAYS** vol 101 (2009) PARA 642 et seq. As to land drainage bodies see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq.

8 See the Land Drainage Act 1991 s 61(B); and **WATER AND WATERWAYS** vol 101 (2009) PARA 643.

9 'Ministers' means the Secretary of State: Environment Act 1995 s 56(1). This provision also refers to the Minister of Agriculture, Fisheries and Food, but his functions are now the responsibility of the Secretary of State (see PARA 58 note 1). As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

10 See the Environment Act 1995 s 9; and PARA 79.

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73. Principal aim and objectives and incidental general functions.

It is the principal aim of the Environment Agency¹ in discharging its functions² so to protect and enhance the environment³, taken as a whole, as to make the contribution which, having regard to its responsibilities and resources, the ministers⁴ consider appropriate for the Agency to make, by the discharge of those functions, towards attaining the objective of achieving sustainable development⁵. The ministers must from time to time give guidance to the Agency with respect to objectives which they consider it appropriate for the Agency to pursue in the discharge of its functions⁶ and the Agency must have regard to any guidance so given⁷. The power to give such guidance is exercisable only after consultation with the Agency, Natural England and such other bodies or persons as the ministers consider it appropriate to consult in relation to the guidance in question⁸. A draft of any such guidance proposed to be given must be laid before each House of Parliament and the guidance may not be given until after the period of 40 days⁹ beginning with the day on which the draft was laid or, if the draft is laid on different days, the later of the two days¹⁰. If, within that period, either House resolves that the guidance should not be given, the ministers must not give it¹¹. The ministers must arrange for any guidance so given to be published in such manner as they consider appropriate¹².

The Agency may do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to¹³, the carrying out of functions¹⁴; and it may institute criminal proceedings in England and Wales¹⁵. It is the Agency's duty to provide the Secretary of State with such advice and assistance as he may request¹⁶.

The Agency may provide for any person, whether in or outside the United Kingdom¹⁷, advice or assistance, including training facilities, as respects any matter in which the Agency has skill or experience¹⁸. The Agency must make arrangements for the carrying out of research and related activities, whether by itself or by others, in respect of matters to which its functions relate and may make the results of any such research or related activities available to any person in return for payment of such fee as it considers appropriate¹⁹.

By agreement with any person, the Agency may charge that person a fee in respect of work done, or services or facilities provided, as a result of a request made by him for advice or assistance, whether of a general or specific character, in connection with any matter involving or relating to environmental licences²⁰.

In exercising any of its powers under any enactment, the Agency must have particular regard to the duties imposed²¹ on any water undertaker or sewerage undertaker which appears to the Agency to be, or to be likely to be, affected by the exercise of the power in question²².

1 le subject to and in accordance with the provisions of the Environment Act 1995 or any other enactment and taking into account any likely costs: s 4(1). As to the establishment of the Environment Agency see PARA 68.

2 As to general functions with respect to pollution control see the Environment Act 1995 s 5; and PARA 75. As to environmental and recreational duties see ss 7, 8, 9; and PARAS 77-79. As to incidental functions of the Agency see s 10; and PARA 80. As to functions with respect to water see s 6; and PARA 76.

3 For these purposes, the 'environment' means all, or any, of the following media, ie the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below land: Environment Act 1995 s 56(1) (definition substituted by the Pollution Prevention and Control Act 1999 Sch 2 paras 14, 17).

4 As to the meaning of 'ministers' see PARA 72 note 9.

5 Environment Act 1995 s 4(1), (3). See further *Securing the Future - UK Government sustainable development strategy* (2005) which was available, at the date at which this volume states the law, at www.defra.gov.uk.

6 Environment Act 1995 s 4(2).

7 Environment Act 1995 s 4(4). See eg Department for Environment Food and Rural Affairs *The Environment Agency's Objectives and Contributions to Sustainable Development: Statutory Guidance* (2002); and *Management Statement Issued to the Environment Agency* (2002); both of which were available, at the date at which this volume states the law, at www.defra.gov.uk.

8 Environment Act 1995 s 4(5) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 140). As to Natural England see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.

9 In reckoning the period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: Environment Act 1995 s 4(8).

10 Environment Act 1995 s 4(6).

11 Environment Act 1995 s 4(7).

12 Environment Act 1995 s 4(9).

13 'Incidental to' refers to what may be derived by reasonable implication from the language used in the statute: *Amalgamated Society of Railway Servants v Osborne* [1910] AC 87 at 97, HL, per Lord Macnaghten; *A-G v Fulham Corp* [1921] 1 Ch 440; *A-G v Smethwick Corp* [1932] 1 Ch 562, CA; *A-G v Crayford UDC* [1962] Ch 246, [1961] 3 All ER 1002 (affd [1962] Ch 575, [1962] 2 All ER 147, CA).

14 Environment Act 1995 s 37(1)(a). Without prejudice to the generality of this power, the Agency may, for the purposes of, or in connection with, the carrying out of those functions, acquire and dispose of land and other property and carry out such engineering or building operations as it considers appropriate: s 37(1)(b). For these purposes, 'engineering or building operations' includes, without prejudice to the generality of that expression, the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works and the installation, modification or removal of any machinery or apparatus: s 37(9).

The provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) so far as applicable, other than ss 4-8, s 10, ss 21, 27(1) (repealed with savings), s 31, Sch 4, apply in relation to any power to acquire land by agreement which is conferred on the Agency by any provisions of the Water Resources Act 1991 or otherwise (including the Environment Act 1995 s 37) as if any reference in those provisions to the acquiring authority were a reference to the Agency and any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power: Water Resources Act 1991 s 154(6) (amended by the Environment Act 1995 Sch 22 paras 128, 157). See **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501 et seq.

15 Environment Act 1995 s 37(1). A person who is authorised by the Agency to prosecute on its behalf in any proceedings before a magistrates' court in England and Wales is entitled to prosecute in any such proceedings: s 54 (amended by the Legal Services Act 2007 Sch 21 para 117, Sch 23).

16 Environment Act 1995 s 37(2). As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

17 As to the meaning of 'United Kingdom' see PARA 1 note 2.

18 Environment Act 1995 s 37(3). Without prejudice to any power of the Agency apart from s 37(3) to provide such advice or assistance, the power so conferred must not be exercised in a case where the person for whom the advice or assistance is provided is outside the United Kingdom except with the consent in writing of the appropriate minister whose consent may be given subject to such conditions as he thinks fit: s 37(4). As to the meaning of 'appropriate minister' see PARA 68 note 4.

19 Environment Act 1995 s 37(5). This provision is not to be taken as preventing the Agency from making the results of any research available to the public free of charge whenever it considers it appropriate to do so: s 37(6).

20 Environment Act 1995 s 37(7). This is without prejudice to the generality of the powers of the Agency to make charges, but is subject to any such express provision with respect to charging by the Agency as is contained in the other provisions of Pt I (ss 1-56) or in any other enactment: s 37(8). 'Environmental licence'

means any of the following: (1) registration of a person as a carrier of controlled waste under the Control of Pollution (Amendment) Act 1989 s 2 (see PARA 710); (2) a permit granted by the Agency under regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARAS 186-188); (3) an authorisation under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed), other than any such authorisation granted by a local enforcing authority; (4) a licence under the Water Resources Act 1991 Pt II Ch II (ss 24-72) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 214 et seq); (5) a consent for the purposes of s 88(1)(a), s 89(4)(a) or s 90 (see PARA 293 et seq); (6) registration or authorisation under the Radioactive Substances Act 1993 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARAS 1439 et seq, 1450 et seq); (7) registration of a person as a broker of controlled waste under any provision which gives effect in England and Wales to European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) on waste art 12 (see PARA 33); (8) registration under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 2 (see PARA 663 note 1) of an establishment or undertaking in relation to a WEEE operation (as defined in Sch 2 para 1) (see PARA 663 note 1); (9) a greenhouse gas emissions permit granted under the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925 (see PARA 260); (10) approval of a scheme under the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 41 (see PARA 652); (11) compliance with the condition in reg 43(e)(i) in relation to a scheme mentioned in head (10) above; (12) approval of an authorised treatment facility or exporter under reg 47; and (13) extension of approval of an exporter under reg 48: Environment Act 1995 s 56(1) (definition amended by SI 2000/1973; SI 2005/925; SI 2005/1728; SI 2006/3289; SI 2007/3538; and SI 2009/3381). As from a day to be appointed, the references in the Environment Act 1995 s 56(1) to the Environmental Protection Act 1990 Pt I are repealed: see the Pollution Prevention and Control Act 1999 s 6(2), Sch 3. At the date at which this volume states the law no such day had been appointed. As to the prospective repeal of the Environmental Protection Act 1990 Pt I see PARA 159 note 2.

21 le by virtue of the provisions of the Water Industry Act 1991 Pts II-IV (ss 6-141): see PARA 998; and **WATER AND WATERWAYS** vol 100 (2009) PARA 137 et seq.

22 Water Resources Act 1991 s 15(1) (amended by the Environment Act 1995 Sch 22 para 128).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/2. ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(ii) The Environment Agency/B. GENERAL FUNCTIONS AND DUTIES/74. Duty to comply with directions.

74. Duty to comply with directions.

The appropriate minister¹ may give the Environment Agency² directions³ of a general or specific character with respect to the carrying out of any of its functions⁴. He may give such directions of a general or specific character as he considers appropriate for the implementation of any obligations of the United Kingdom⁵ under the European Union treaties, or any international agreement to which the United Kingdom is for the time being a party⁶. Except in an emergency, the power to give any such direction is exercisable only after consultation with the Agency⁷.

It is the Agency's duty to comply with any direction given to it by a Minister of the Crown under these provisions or under any other enactment⁸. In determining any appeal against, or reference or review of, a decision of the Agency or any application transmitted from the Agency, the body or person making the determination is bound by any such direction to the same extent as the Agency⁹.

1 As to the meaning of 'appropriate minister' see PARA 68 note 4.

2 As to the establishment of the Environment Agency see PARA 68.

3 As to directions given under the Environment Act 1995 see PARA 154.

4 Environment Act 1995 s 40(1).

5 As to the meaning of 'United Kingdom' see PARA 1 note 2.

6 Environment Act 1995 s 40(2) (amended by virtue of the European Union (Amendment) Act 2008 s 3(6)). Such a direction must be published in such manner as the minister giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and copies of the direction must be made available to the public: Environment Act 1995 s 40(3)(a). Notice of the giving of the direction, and of where a copy of it may be obtained, must be given in the London Gazette: s 40(3) (b). Section 40(3) has effect in relation to any direction given to the Agency under any other enactment for the implementation of any such obligation or agreement as is mentioned in s 40(2) as it has effect in relation to a direction given under s 40(2): s 40(4).

7 Environment Act 1995 s 40(6).

8 Environment Act 1995 s 40(8). Any power of the appropriate minister to give directions to the Agency otherwise than by virtue of s 40 is without prejudice to any power to give directions conferred by s 40: s 40(7).

9 Environment Act 1995 s 40(5).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/2. ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(ii) The Environment Agency/B. GENERAL FUNCTIONS AND DUTIES/75. General functions with respect to pollution control.

75. General functions with respect to pollution control.

The Environment Agency's¹ pollution control powers² are exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of, pollution of the environment³. For the purpose of facilitating the carrying out of its pollution control functions⁴, or of enabling it to form an opinion of the general state of pollution of the environment, the Agency must compile information⁵ relating to such pollution⁶. If required by either of the ministers⁷ to do so, the Agency must also:

- 22 (1) carry out assessments, whether generally or for such particular purposes as may be specified in the requirement, of the effect, or likely effect, on the environment of existing or potential levels of pollution of the environment and report its findings to that minister⁸; or
- 23 (2) prepare and send to that minister a report identifying the options which the Agency considers to be available for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment, whether generally or in cases or circumstances specified in the requirement, and the costs and benefits of such options as are so identified⁹.

The Agency must follow developments in technology and techniques for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment¹⁰.

1 As to the establishment of the Environment Agency see PARA 68.

2 For these purposes, 'pollution control powers' in relation to the Environment Agency means its powers under or by virtue of the following enactments, ie: (1) the Alkali etc Works Regulation Act 1906 (repealed); (2) the Health and Safety at Work Etc Act 1974 Pt I (ss 1-54) (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 302); (3) the Control of Pollution Act 1974 Pt I (ss 11-30) (see PARA 620); (4) the Control of Pollution (Amendment) Act 1989 (see PARA 709 et seq); (5) the Environmental Protection Act 1990 Pts I-IIA (ss 1-78YC) (see PARAS 159 et seq, 761 et seq); (6) the Water Industry Act 1991 Pt IV Ch III (ss 118-141) (see PARA 998 et seq); (7) the Water Resources Act 1991 Pt III (ss 82-104) and ss 161-161D (see PARA 321 et seq); (8) the Radioactive Substances Act 1993 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450 et seq); (9) regulations made under the Pollution Prevention and Control Act 1999 s 2 (see PARAS 186-188); and (10) regulations made by virtue of the European Communities Act 1972 s 2(2), to the extent that the regulations relate to pollution: Environment Act 1995 s 5(5) (amended by the Pollution Prevention and Control Act 1999 Sch 2 paras 14, 15). As from a day to be appointed, the reference in the Environment Act 1995 s 5(5) to the Environmental Protection Act 1990 Pt I (prospectively repealed) is repealed: see the Pollution Prevention and Control Act 1999 s 6(2), Sch 3. At the date at which this volume states the law no such day had been appointed. As to the prospective repeal of the Environmental Protection Act 1990 Pt I see PARA 159 note 2.

3 Environment Act 1995 s 5(1). As to the meaning of 'environment' see PARA 73 note 3.

4 For these purposes, 'pollution control functions', in relation to the Agency, means its functions under or by virtue of the enactments mentioned in note 2: see the Environment Act 1995 s 5(5).

5 Ie whether the information is acquired by the Agency carrying out observations or is obtained in any other way: Environment Act 1995 s 5(2).

6 Environment Act 1995 s 5(2).

7 As to the meaning of 'ministers' see PARA 72 note 9.

- 8 Environment Act 1995 s 5(3)(a).
- 9 Environment Act 1995 s 5(3)(b).
- 10 Environment Act 1995 s 5(4).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/2. ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(ii) The Environment Agency/B. GENERAL FUNCTIONS AND DUTIES/76. General provisions with respect to water.

76. General provisions with respect to water.

It is the duty of the Environment Agency¹, to such extent as it considers desirable, generally to promote²: (1) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters³; (2) the conservation of flora and fauna which are dependent on an aquatic environment⁴; and (3) the use of such waters and land for recreational purposes⁵. It is also the duty of the Agency to take all such action as it may from time to time consider, in accordance with any ministerial directions given to it⁶, to be necessary or expedient for the purpose of conserving, redistributing or otherwise augmenting water resources in England and Wales and of securing the proper use of water resources in England and Wales (including the efficient use of those resources)⁷.

The Agency must, in relation to England and Wales, exercise a general supervision over all matters relating to flood defence⁸. The Agency's flood defence functions⁹ extend to the territorial sea adjacent to England and Wales in so far as: (a) the area of any regional flood defence committee includes any area of that territorial sea¹⁰; or (b) the statutory provisions relating to drainage works for the purpose of defence against sea water or tidal water and works etc to secure an adequate outfall for a main river¹¹ provide for the exercise of any power in the territorial sea¹².

It is also the duty of the Agency to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries¹³.

1 As to the establishment of the Environment Agency see PARA 68.

2 Environment Act 1995 s 6(1). Section 6(1) is expressed to be without prejudice to the duties of the Environment Agency under s 7 (see PARA 77): see s 6(1).

3 Environment Act 1995 s 6(1)(a). The provisions of the Water Resources Act 1991 Pt II Ch II (ss 24-72) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 214 et seq) relating to the functions of the Agency under that Chapter and the related water resources provisions so far as they relate to other functions of the Agency do not apply to so much of any inland waters as are part of the River Tweed, or are part of the River Esk or River Sark at a point where either of the banks of the river is in Scotland, or are part of any tributary stream of the River Esk or the River Sark at a point where either of the banks of the tributary stream is in Scotland: Environment Act 1995 s 6(3). For these purposes, 'related water resources provisions' has the same meaning as it has in the Water Resources Act 1991 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 188): Environment Act 1995 s 6(8). 'The River Tweed' means 'the river' within the meaning of the Tweed Fisheries Amendment Act 1859 as amended by byelaws: Environment Act 1995 s 6(8).

As from a day to be appointed, s 6(3) is amended so as to disapply the provisions from the inland waters mentioned above except so much of those inland waters as are in England: s 6(3) (prospectively amended by the Water Act 2003 s 73). At the date at which this volume states the law no such day had been appointed.

The Environment Act 1995 s 6(3) applies to the Water Act 2003 ss 3, 4 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 216), and such of the related water resources provisions as apply in relation to ss 3, 4 by virtue of s 33(2), as it applies to the provisions referred to in s 33(2) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 188): Environment Act 1995 s 6(3A) (added by the Water Act 2003 Sch 7 Pt 1 para 15(1), (2)).

4 Environment Act 1995 s 6(1)(b).

5 Environment Act 1995 s 6(1)(c). It is the duty of the Agency, in determining what steps to take in performance of the duty imposed by virtue of s 6(1)(c), to take into account the needs of persons who are chronically sick or disabled: s 6(1).

6 le under the Environment Act 1995 s 40: see PARA 74.

7 Environment Act 1995 s 6(2) (amended by the Water Act 2003 s 72). However, nothing in the Environment Act 1995 s 6(2) may be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of the Water Industry Act 1991 s 37 (general duty to maintain water supply system) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 319): Environment Act 1995 s 6(2). As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq.

8 Environment Act 1995 s 6(4). This provision is expressed to be subject to the Water Resources Act 1991 s 106 (obligation to carry out flood defence functions through committees) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 573): see the Environment Act 1995 s 6(4).

9 'Flood defence functions' in relation to the Agency, has the same meaning as in the Water Resources Act 1991 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 573): Environment Act 1995 s 56(1).

10 Environment Act 1995 s 6(5)(a). As to regional flood defence committees see **WATER AND WATERWAYS** vol 101 (2009) PARA 559. As to the territorial sea see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

11 le the Water Resources Act 1991 s 165(2), (3): see **WATER AND WATERWAYS** vol 101 (2009) PARA 573 et seq.

12 Environment Act 1995 s 6(5)(b).

13 Environment Act 1995 s 6(6). As from a day to be appointed, the reference to 'salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries' is replaced by a reference to fisheries of such fish plus of lampreys and smelt and such other fish as specified under the Salmon and Freshwater Fisheries Act 1975 s 4A, and a new provision is added with appropriate definitions: Environment Act 1995 s 6(6), (8) (s 6(6) prospectively amended and s 6(8) prospectively added by the Marine and Coastal Access Act 2009 s 230(1)-(3)). At the date at which this volume states the law no such day or days had been appointed although the amendment to the Environment Act 1996 s 6(6) was in force from 12 November 2009 but only so far as it confers power to make regulations or an order.

The area in respect of which the Agency must carry out its functions relating to fisheries is the whole of England and Wales, together with: (1) such part of the territorial sea adjacent to England and Wales as extends for six miles from the baselines from which the breadth of that sea is measured; (2) in the case of the Salmon and Freshwater Fisheries Act 1975, the Water Resources Act 1991 Pt V (ss 115, 116), and the Environment Act 1995 s 6(6), so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland; and (3) in the case of the Salmon and Freshwater Fisheries Act 1975 ss 31-34, 36(2) as applied by s 39(1B), so much of the catchment area of the River Esk as is situated in Scotland: Environment Act 1995 s 6(7) (amended by SI 2009/463). In the case of the enactments specified in head (2), the River Tweed is excluded: s 6(7). 'Miles' means international nautical miles of 1,852 metres: Environment Act 1995 s 6(8). See **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 847.

UPDATE

76 General provisions with respect to water

NOTE 13--Appointed day is 12 January 2010: SI 2009/3345.

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77. General environmental and recreational duties.

It is the duty of each of the ministers¹ and of the Environment Agency² in formulating or considering any proposals relating to any functions of the Agency, other than its pollution control functions³, so to exercise any power conferred on him or it with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest⁴. This duty is, however, subject to its carrying out being consistent: (1) with the purposes of any enactment relating to the functions of the Agency⁵; (2) with the objective in the case of each of the ministers of achieving sustainable development⁶; (3) in the case of the Agency, with any guidance given with respect to the objectives of achieving sustainable development⁷; and (4) in the case of the Secretary of State⁸, with his general duties⁹ with respect to the water industry¹⁰.

In formulating or considering any proposals in relation to the Agency's pollution control functions, it is the duty of each of the ministers and of the Agency to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiographical features of special interest¹¹.

In formulating or considering any proposals relating to any functions of the Agency, it is the duty of each of the ministers and of the Agency: (a) to have regard to the desirability of protecting and conserving buildings¹², sites and objects of archaeological, architectural, engineering or historic interest¹³; (b) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects¹⁴; and (c) to have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas¹⁵.

Subject to the above provisions, it is also the duty of each of the ministers and the Agency in formulating or considering any proposals relating to any functions of the Agency: (i) to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty¹⁶; (ii) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest¹⁷; and (iii) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility¹⁸.

The above provisions¹⁹ apply so as to impose duties on the Agency in relation to:

- 24 (A) any proposals relating to the functions of a water undertaker or sewerage undertaker²⁰;
- 25 (B) any proposals relating to the management, by the company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever, whether or not connected with the carrying out of the functions of a such an undertaker²¹; and
- 26 (C) any proposal which, by virtue of the provisions relating to disposals of protected land²², falls to be treated²³ as a proposal relating to the functions of a water undertaker or sewerage undertaker²⁴,

as they apply in relation to proposals relating to the Agency's own functions, other than its pollution control functions²⁵.

It is also the duty of the Agency to take such steps as are reasonably practicable and as are consistent with the purposes of the enactments relating to its own functions (and taking into account the needs of persons who are chronically sick or disabled)²⁶ for securing, so long as it has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner²⁷. This duty is subject to obtaining the consent of any navigation, harbour or conservancy authority²⁸ before doing anything which causes obstruction of, or other interference with, navigation which is subject to the control of that authority²⁹.

Nothing in these provisions³⁰ requires recreational facilities made available by the Agency to be made available free of charge³¹.

1 As to the meaning of 'ministers' see PARA 72 note 9.

2 As to the establishment of the Environment Agency see PARA 68.

3 As to the meaning of 'pollution control functions' see PARA 75 note 4; definition applied by the Environment Act 1995 s 7(7). As to factors to be considered in relation to pollution control functions see the text and note 11. As to the Agency's pollution control functions generally see PARA 75.

4 Environment Act 1995 s 7(1)(a). As to similar provisions in relation to water see the Water Industry Act 1991 s 3; and **WATER AND WATERWAYS** vol 101 (2009) PARA 676. As to the right to roam under the Countryside and Rights of Way Act 2000 see **COMMONS** vol 13 (2009) PARA 580.

5 Environment Act 1995 s 7(1)(a)(i).

6 Environment Act 1995 s 7(1)(a)(ii).

7 Environment Act 1995 s 7(1)(a)(iii). The guidance referred to in the text is guidance given under s 4 (see PARA 73): see s 7(1)(a)(iii).

8 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Ie under the Water Industry Act 1991 s 2: see **WATER AND WATERWAYS** vol 100 (2009) PARA 130.

10 Environment Act 1995 s 7(1)(a)(iv).

11 See the Environment Act 1995 s 7(1)(b).

12 For these purposes, 'building' includes structure: Environment Act 1995 s 7(7).

13 Environment Act 1995 s 7(1)(c)(i).

14 Environment Act 1995 s 7(1)(c)(ii).

15 Environment Act 1995 s 7(1)(c)(iii).

16 Environment Act 1995 s 7(2)(a).

17 Environment Act 1995 s 7(2)(b).

18 Environment Act 1995 s 7(2)(c).

19 Ie under the Environment Act 1995 s 7(1), (2): see the text and notes 1-18.

20 Environment Act 1995 s 7(3)(a). As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARAS 134 et seq, 318 et seq; and as to sewerage undertakers see PARA 999.

21 Environment Act 1995 s 7(3)(b).

22 Ie under the Water Industry Act 1991 s 156(7): see **WATER AND WATERWAYS** vol 101 (2009) PARA 454.

23 le for the purposes of the Environment Act 1995 s 3: see **WATER AND WATERWAYS** vol 101 (2009) PARA 676.

24 Environment Act 1995 s 7(3)(c).

25 Environment Act 1995 s 7(3).

26 See the Environment Act 1995 s 7(5).

27 Environment Act 1995 s 7(4).

28 'Navigation authority', 'harbour authority' and 'conservancy authority' have the meanings given by the Water Resources Act 1991 s 221(1) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 189): Environment Act 1995 s 56(1).

29 Environment Act 1995 s 7(4).

30 le nothing in the Environment Act 1995 s 7 or the following provisions of the Act or in the Water Resources Act 1991.

31 Environment Act 1995 s 7(6).

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78. Environmental duties in relation to sites of special interest.

Where Natural England or the Countryside Council for Wales¹ is of the opinion that any land in England or, as the case may be, in Wales is of special interest by reason of its flora, fauna or geological or physiographical features, and may at any time be affected by schemes, works, operations or activities of the Environment Agency², or by an authorisation³ given by the Agency, the Agency (or as the case may be the Council) must notify the fact that the land is of special interest for that reason to the Agency⁴. Similarly, where a national park authority⁵ or the Broads Authority⁶ is of the opinion that any area of land in a national park or in the Broads⁷ is land in relation to which certain environmental matters⁸ are of particular importance, and may at any time be affected by schemes, works, operations or activities of the Agency or by an authorisation given by the Agency, it must notify the Agency of the fact that the land is such land, and of the reasons why those matters are of particular importance in relation to that land⁹.

Where the Agency has received any such notification with respect to any land, it must consult the notifying body before carrying out or authorising any works, operations or activities which appear to the Agency likely¹⁰: (1) to destroy or damage any of the flora, fauna or geological or physiographical features by reason of which the land is of special interest¹¹; or (2) significantly to prejudice anything the importance of which is one of the reasons why the environmental matters mentioned above¹² are of particular importance in relation to that land¹³. This requirement for consultation does not, however, apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to Natural England, the Countryside Council for Wales, the national park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done¹⁴.

1 As to Natural England and the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523, 524.

2 As to the establishment of the Environment Agency see PARA 68.

3 For these purposes, 'authorisation' includes any consent or licence: Environment Act 1995 s 8(5).

4 Environment Act 1995 s 8(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 141(1), (2)).

See also the Water Industry Act 1991 s 4; and **WATER AND WATERWAYS** vol 101 (2009) PARA 677. As to sites of special interest see *Southern Water Authority v Nature Conservancy Council* [1992] 3 All ER 481, [1992] 1 WLR 775, HL. See also **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.

5 'National park authority' means a national park authority established under the Environment Act 1995 s 63 which has become the local planning authority for the national park in question: s 8(5) (definition amended by Sch 24). See further **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

6 As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734.

7 'The Broads' has the same meaning as in the Norfolk and Suffolk Broads Act 1988: Environment Act 1995 s 8(5).

8 I.e. the matters for the purposes of which the Environment Act 1995 s 6(1) (see PARA 76) and s 7 (other than s 7(1)(c)(iii)) (see PARA 77) have effect: s 8(2)(a).

9 Environment Act 1995 s 8(2).

10 Environment Act 1995 s 8(3).

11 Environment Act 1995 s 8(3)(a).

12 le the matters mentioned in the Environment Act 1995 s 8(2): see the text and notes 8-9.

13 Environment Act 1995 s 8(3)(b).

14 Environment Act 1995 s 8(4) (amended by the Natural Environment and Rural Communities Act 2006 Sch
11 Pt 1 para 141(1), (3)).

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79. Codes of practice with respect to environmental and recreational duties.

Each of the ministers¹ has power by order² to approve any code of practice issued (whether by him or by another person) for the purpose of: (1) giving practical guidance to the Environment Agency with respect to any of certain environmental matters³; and (2) promoting what appear to him to be desirable practices by the Agency with respect to those matters⁴, and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification⁵.

Neither of the ministers may make such an order unless he has first consulted:

- 27 (a) the Environment Agency⁶;
- 28 (b) Natural England and the Countryside Council for Wales⁷;
- 29 (c) the Historic Buildings and Monuments Commission for England⁸;
- 30 (d) the Sports Council and the Sports Council for Wales⁹; and
- 31 (e) such other persons as he considers it appropriate to consult¹⁰.

In discharging its general environmental duties¹¹, the Environment Agency must have regard to any code of practice, and any modifications of a code of practice, for the time being approved¹².

1 As to the meaning of 'ministers' see PARA 72 note 9.

2 The power of each of the ministers to make such an order is exercisable by statutory instrument; and any statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: Environment Act 1995 s 9(4). In exercise of this power, the ministers have made the Code of Practice on Environmental Procedures for Flood Defence Operating Authorities (Environment Agency) Approval Order 1996, SI 1996/3061, which approves the Code of Practice on Environmental Procedures for Flood Defence Operating Authorities; and the Water and Sewerage (Conservation, Access and Recreation) (Code of Practice) Order 2000, SI 2000/477, which approves the Code of Practice on Conservation, Access and Recreation. As to flood defence see **WATER AND WATERWAYS** vol 101 (2009) PARA 559 et seq.

3 Environment Act 1995 s 9(1)(a). The environmental matters referred to in the text are any of the matters for the purposes of which ss 6(1), 7, 8 (see PARAS 76-78) have effect: s 9(1)(a). As to the establishment of the Environment Agency see PARA 68.

4 Environment Act 1995 s 9(1)(b).

5 Environment Act 1995 s 9(1). See also the Water Industry Act 1991 s 5; and **WATER AND WATERWAYS** vol 101 (2009) PARA 678.

6 Environment Act 1995 s 9(3)(a).

7 Environment Act 1995 s 9(3)(b) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 142).

As to Natural England and the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.

8 Environment Act 1995 s 9(3)(c). As to the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage') see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 803 et seq.

9 Environment Act 1995 s 9(3)(d). As to the Sports Council and the Sports Council for Wales see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 965.

10 Environment Act 1995 s 9(3)(e).

11 le under the Environment Act 1995 ss 6(1), 7, 8: see PARAS 76-78.

12 Environment Act 1995 s 9(2). As to the meaning of 'modifications' see PARA 71 note 11.

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80. Incidental functions.

For the purposes of its general powers (the 'relevant purposes')¹, the functions of the Environment Agency must be taken to include the protection against pollution of:

- 32 (1) any waters, whether on the surface or underground, which belong to the Agency or any water undertaker² or from which the Agency or any water undertaker is authorised to take water³;
- 33 (2) without prejudice to head (1) above, any reservoir which belongs to or is operated by the Agency or any water undertaker or which the Agency or any water undertaker is proposing to acquire or construct for the purpose of being so operated⁴; and
- 34 (3) any underground strata from which the Agency or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under the statutory provisions⁵ relating to abstraction and impounding⁶.

For the relevant purposes, the functions of the Agency must be taken to include joining with or acting on behalf of one or more relevant undertakers⁷ for the purpose of carrying out any works or acquiring any land which at least one of the undertakers with which it joins, or on whose behalf it acts, is authorised to carry out or acquire⁸ for the purposes of: (a) any function of that undertaker under any enactment⁹; or (b) any function which is taken to be a function of that undertaker for the purposes of the construction of any enactment which, by reference to the functions of a relevant undertaker, confers any power on or in relation to that undertaker¹⁰.

For the relevant purposes, the functions of the Agency must also be taken to include:

- 35 (i) the provision of supplies of water in bulk¹¹, whether or not such supplies are provided for the purposes of, or in connection with, the carrying out of any other function of the Agency¹²; and
- 36 (ii) the provision of houses and other buildings for the use of persons employed by the Agency and the provision of recreation grounds for persons so employed¹³.

1 The Environment Act 1995 s 10 has effect:

9 (1) for the purposes of s 37(1) (see PARA 73), as it applies in relation to the Environment Agency; and

10 (2) for the construction of any other enactment which, by reference to the functions of the Agency, confers any power on or in relation to the Agency,

and any reference in s 10 to 'the relevant purposes' is a reference to the purposes described in heads (1) and (2) above: s 10(1). As to the establishment of the Environment Agency see PARA 68.

2 As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq.

3 Environment Act 1995 s 10(2)(a).

4 Environment Act 1995 s 10(2)(b).

5 le under the Water Resources Act 1991 Pt II Ch II (ss 24-72): see **WATER AND WATERWAYS** vol 100 (2009) PARA 214 et seq.

6 Environment Act 1995 s 10(2)(c).

7 'Relevant undertaker' means a water undertaker or sewerage undertaker: Environment Act 1995 s 10(6). As to sewerage undertakers see PARA 999.

8 Environment Act 1995 s 10(3).

9 Environment Act 1995 s 10(3)(a).

10 Environment Act 1995 s 10(3)(b). The purposes referred to in the text are the purposes to which the Water Industry Act 1991 s 217 applies (see **WATER AND WATERWAYS** vol 100 (2009) PARA 133): see the Environment Act 1995 s 10(3)(b).

11 'Supply of water in bulk' means a supply of water for distribution by a water undertaker taking the supply: Environment Act 1995 s 10(6).

12 Environment Act 1995 s 10(4).

13 Environment Act 1995 s 10(5).

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81. General duty to have regard to costs and benefits in exercising powers.

In considering whether or not to exercise any power conferred upon it by or under any enactment, or in deciding the manner in which to exercise any such power, the Environment Agency¹ must, unless and to the extent that it is unreasonable for it to do so in view of the nature or purpose of the power or in the circumstances of the particular case, take into account the likely costs² and benefits of the exercise or non-exercise of the power or its exercise in the manner in question³. This duty does not, however, affect the Agency's obligation nevertheless to discharge any duties, comply with any requirements, or pursue any objectives otherwise⁴ imposed upon or given to the Agency⁵.

1 As to the establishment of the Environment Agency see PARA 68.

2 'Costs' includes costs to any person and costs to the environment: Environment Act 1995 s 56(1). As to the meaning of 'environment' see PARA 73 note 3.

3 Environment Act 1995 s 39(1).

4 Ie otherwise than by the Environment Act 1995 s 39: see s 39(2).

5 Environment Act 1995 s 39(2).

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82. Power to impose charges.

Without prejudice to the generality of the Environment Agency's powers¹, and subject to any express provision with respect to charging by the Agency², the Agency has the power to fix and recover charges for services and facilities provided in the course of carrying out its functions³.

¹ le the powers under the Environment Act 1995 s 37(1)(a): see PARA 73. As to the establishment of the Environment Agency see PARA 68.

² le contained in the Environment Act 1995 ss 37-42 or any other enactment. As to charging schemes see PARAS 97, 98.

³ Environment Act 1995 s 43.

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83. Environment protection advisory committees.

The Environment Agency¹ must establish and maintain environment protection advisory committees for the different regions² of England and Wales³. The Agency must consult the advisory committee for any region as to any proposals of the Agency relating generally to the manner in which the Agency carries out its functions in that region⁴, and must consider any representations made to it by the committee for any region⁵ as to the manner in which the Agency carries out its functions in that region⁶.

The advisory committee for any region consists of a chairman appointed by the Secretary of State⁷ and such other members as the Agency may appoint in accordance with the provisions of the approved membership scheme⁸ for that region⁹.

It is the Agency's duty, in accordance with such guidance as may be given for the purpose by the Secretary of State, to prepare in respect of each region a scheme with respect to the appointment of persons as members of the advisory committee for that region and to submit that scheme to the Secretary of State for his approval before the date specified in the guidance¹⁰. A scheme does not come into force unless it has been approved by the Secretary of State or until such date as he may specify for the purpose of giving his approval¹¹. Where he approves a scheme, with or without modifications, it is the Agency's duty to take such steps as it considers appropriate for bringing the scheme to the attention of persons whom it considers likely to be interested in it¹². An approved membership scheme may from time to time be varied by the Agency with the approval of the Secretary of State¹³. The Agency may from time to time, and if required to do so by the Secretary of State must, prepare a fresh scheme with respect to the appointment of persons as members of the advisory committee for any particular region and submit that scheme to the Secretary of State for his approval¹⁴.

Before appointing a person to be a member of an advisory committee, the Agency must consult such of the associates¹⁵ for that advisory committee as it considers appropriate in the particular case and may, if it considers it appropriate to do so, also consult bodies or persons who are not associates for that committee¹⁶.

The validity of any proceedings of an advisory committee is not affected by any vacancy among the members, any defect in the appointment of a member, or any temporary breach of the terms of the approved membership scheme for the advisory committee¹⁷.

The Agency must pay to the chairman of an advisory committee such remuneration, and such travelling and other allowances, and to the other members such sums by way of reimbursement¹⁸ for loss of remuneration, travelling expenses and other out of pocket expenses, as the Secretary of State may determine¹⁹.

1 As to the establishment of the Environment Agency see PARA 68.

2 This duty to establish and maintain advisory committees is a duty to establish and maintain an advisory committee for each area which the Agency considers it appropriate for the time being to regard as a region of England and Wales for these purposes: Environment Act 1995 s 12(5). In determining the regions for which advisory committees are to be established and maintained, it is the Agency's duty to ensure that one of those regions consists wholly or mainly of, or of most of, Wales: s 12(6).

3 Environment Act 1995 s 12(1)(a).

4 Environment Act 1995 s 12(1)(b). For these purposes, functions of the Agency which are carried out in any area of Scotland, or of the territorial sea, which is adjacent to any region for which an advisory committee is maintained, are regarded as carried out in that region: s 12(7).

5 Ie whether or not in response to consultation under the Environment Act 1995 s 12(1)(b) (see the text and note 4): see s 12(1)(c).

6 Environment Act 1995 s 12(1)(c).

7 Environment Act 1995 s 12(2)(a). In appointing the chairman of any such committee, the Secretary of State must have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee: s 12(3). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

8 'Approved membership scheme' means a scheme, as in force for the time being, prepared by the Agency and approved (with or without modification) by the Secretary of State under the Environment Act 1995 Sch 3 (see the text and notes 10-19) which makes provision with respect to the membership of the advisory committee for a region: s 12(9).

9 Environment Act 1995 s 12(2)(b). The members so appointed must not be members of the Agency but must be persons who appear to the Agency likely to have a significant interest in matters likely to be affected by the manner in which the Agency carries out any of its functions in the region of the advisory committee in question: s 12(4).

10 Environment Act 1995 s 12(8), Sch 3 paras 1, 2(1). Every scheme must: (1) specify descriptions of bodies which, or persons who, appear to the Agency likely to have a significant interest in matters likely to be affected by the manner in which it carries out its functions in the region to which the scheme relates; (2) indicate how the membership of the advisory committee is to reflect the different descriptions of bodies or persons so specified; (3) specify or describe bodies which, and persons whom, the Agency proposes to consult in connection with appointments of persons as members of the advisory committee; and (4) make provision with respect to such other matters as the Agency considers relevant to the membership of the advisory committee: Sch 3 para 2(2).

11 Environment Act 1995 Sch 3 para 3(1). Where the Agency submits a scheme to the Secretary of State for his approval, it must also submit to him a statement of the Agency's reasons for considering that the scheme is one which it is appropriate for him to approve and such information in support of those reasons as it considers necessary: Sch 3 para 3(2). On submitting a scheme to the Secretary of State for his approval, the Agency must publish it, in such manner as it considers appropriate for bringing it to the attention of persons likely to be interested in it, together with a notice specifying the period within which representations or objections with respect to the scheme may be made to the Secretary of State: Sch 3 para 3(3). It is the Secretary of State's duty, in determining whether to approve, approve subject to modifications, or reject, any scheme submitted to him for his approval, to consider any representations or objections made to him within the specified period and not withdrawn: Sch 3 para 3(4). As to the meaning of 'modifications' see PARA 71 note 11.

12 Environment Act 1995 Sch 3 para 3(5).

13 Environment Act 1995 Sch 3 para 4(2). The provisions of Sch 3 para 3 have effect in relation to any such variation of an approved membership scheme as they have effect in relation to a scheme: Sch 3 para 4(3).

14 Environment Act 1995 Sch 3 para 4(1). The provisions of Sch 3 para 3 have effect accordingly in relation to any such scheme: Sch 3 para 4(1).

15 'Associates', in the case of any advisory committee, means those bodies and persons specified or described in the approved membership scheme for that advisory committee pursuant to the Environment Act 1995 Sch 3 para 2(2)(c) (see note 10 head (3)): Sch 3 para 5(2).

16 Environment Act 1995 Sch 3 para 5(1).

17 Environment Act 1995 Sch 3 para 6.

18 Ie whether in whole or in part: see the Environment Act 1995 Sch 3 para 7(2).

19 Environment Act 1995 Sch 3 para 7(1), (2).

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84. Regional and local fisheries advisory committees.

It is the duty of the Environment Agency¹ to establish and maintain advisory committees of persons who are not members of the Agency but appear to it to be interested in salmon fisheries, trout fisheries, freshwater fisheries or eel fisheries in the different parts of the controlled area². Such a duty is a duty to establish and maintain:

- 37 (1) a regional advisory committee for each such region of the controlled area as the Agency considers it appropriate for the time being to regard as a region of that area for these purposes³; and
- 38 (2) such local advisory committees as the Agency considers necessary to represent in the different parts of each such region: (a) the interests in salmon fisheries, trout fisheries, freshwater fisheries or eel fisheries⁴; and (b) where persons may be appointed members of those committees⁵ by reference to any such interests, the interests in question⁶.

There must be paid by the Agency to the chairman of any regional or local advisory committee so established and maintained such remuneration and such travelling and other allowances⁷, and to any other members of that committee such sums by way of reimbursement (whether in whole or in part) for loss of remuneration, for travelling expenses or for any other out-of-pocket expenses⁸, as may be determined by one of the ministers⁹.

It is also the duty of the Agency to consult the advisory committees as to the manner in which the Agency is to perform its duty to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries or eel fisheries¹⁰. If the Agency, with the consent of the ministers, so determines, it is also under a duty to consult those committees, or such of them as may be specified or described in the determination, as to¹¹: (i) the manner in which it is to perform its duties under or by virtue of such of the enactments relating to recreation, conservation or navigation as may be the subject of the determination¹²; or (ii) such matters relating to recreation, conservation or navigation as may be the subject of the determination¹³. Where the Agency is under such a duty to consult those committees or any of them, there may be included among the members of the committees in question persons who are not members of the Agency but who appear to it to be interested in matters likely to be affected by the manner in which it performs the duties to which the determination in question relates, or which are the subject of the determination, if the ministers consent to the inclusion of persons of that description¹⁴.

1 As to the establishment of the Environment Agency see PARA 68.

2 Environment Act 1995 s 13(1)(a). As from a day to be appointed, this provision is amended so that the reference to 'salmon fisheries, trout fisheries, freshwater fisheries or eel fisheries' is replaced by a reference to 'the fisheries referred to in s 6(6)': s 13(1)(a) (prospectively amended by the Marine and Coastal Access Act 2009 Sch 16 para 26). At the date at which this volume states the law no such day had been appointed.

For these purposes, 'controlled area' means the area specified in the Environment Act 1995 s 6(7) in respect of which the Agency carries out functions under s 6(6) (see PARA 76) and the Water Resources Act 1991 Pt V (ss 115, 116) (see PARAS 1036, 1046): Environment Act 1995 s 13(8).

3 Environment Act 1995 s 13(4)(a). It is the duty of the Agency in determining the regions for which regional advisory committees are established and maintained under s 13 to ensure that one of those regions consists (apart from territorial waters) wholly or mainly of, or of most of, Wales: s 13(5). In addition to any members appointed under s 13(1)-(4), there must, in the case of each regional advisory committee established and maintained under these provisions, also be a chairman appointed by the Secretary of State: see s 13(6). As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 le the interests referred to in the Environment Act 1995 s 13(1)(a): see the text and note 2.

5 le by virtue of the Environment Act 1995 s 13(3): see the text and note 14.

6 Environment Act 1995 s 13(4)(b).

7 Environment Act 1995 s 13(7)(a).

8 Environment Act 1995 s 13(7)(b).

9 Environment Act 1995 s 13(7). As to the meaning of 'ministers' see PARA 72 note 9.

10 Environment Act 1995 s 13(1)(b). The duty referred to in the text is the duty under s 6(6) (see PARA 76): see s 13(1)(b).

11 Environment Act 1995 s 13(2).

12 Environment Act 1995 s 13(2)(a).

13 Environment Act 1995 s 13(2)(b).

14 Environment Act 1995 s 13(3).

UPDATE

84 Regional and local fisheries advisory committees

NOTE 2--Appointed day is 12 January 2010: SI 2009/3345.

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85. Flood defence committees.

For the purposes of flood defence¹ there are regional flood defence committees². As part of a local flood defence scheme³, the Environment Agency⁴ may also create local flood defence committees⁵. Provision is made for the composition⁶, membership⁷ and proceedings⁸ of these committees.

1 As to flood defence generally see **WATER AND WATERWAYS** vol 101 (2009) PARA 556 et seq.

2 See the Environment Act 1995 s 14; and **WATER AND WATERWAYS** vol 101 (2009) PARA 559. As to the boundaries of regional flood defence areas see s 14, Sch 4; and **WATER AND WATERWAYS** vol 101 (2009) PARA 560.

3 As to local flood defence schemes see the Environment Act 1995 s 17; and **WATER AND WATERWAYS** vol 101 (2009) PARA 563.

4 As to the establishment of the Environment Agency see PARA 68.

5 See the Environment Act 1995 s 17; and **WATER AND WATERWAYS** vol 101 (2009) PARA 563.

6 As to the composition of regional flood defence committees see the Environment Act 1995 ss 15, 16; and **WATER AND WATERWAYS** vol 101 (2009) PARA 561. As to the power to alter the composition of regional flood defence committees in Wales see ss 16A, 16B; and **WATER AND WATERWAYS** vol 101 (2009) PARA 562. As to the composition of local flood defence committees see s 18; and **WATER AND WATERWAYS** vol 101 (2009) PARA 564. As to the power to revoke local defence schemes see s 18A; and **WATER AND WATERWAYS** vol 101 (2009) PARA 565.

7 See the Environment Act 1995 s 19, Sch 5 Pt I; and **WATER AND WATERWAYS** vol 101 (2009) PARA 566.

8 See the Environment Act 1995 s 19, Sch 5 Pt II; and **WATER AND WATERWAYS** vol 101 (2009) PARA 568.

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86. Delegation of functions to the Environment Agency.

Agreements may be made¹ between any Minister of the Crown² and the Environment Agency³ authorising the Agency or any of its employees to exercise on behalf of that minister⁴ any of his functions which is an eligible function⁵. Such an agreement may provide for any eligible function to which it relates to be exercisable by the Agency (or any of its employees) either wholly or to such extent, either generally or in such cases or areas, or either unconditionally or subject to the fulfilment of such conditions, as may be specified in the agreement⁶.

Where a Minister of the Crown has power to include, in any arrangements that he makes in relation to the performance by him of an eligible function, provision for the making of payments to him by:

- 39 (1) other parties to the arrangements⁷; or
- 40 (2) persons who use any facilities or services provided by him pursuant to the arrangements or in relation to whom the function is otherwise exercisable⁸,

he may include in any such arrangements provision for the making of such payments to him or the Agency in cases where the Agency (or any of its employees) acts on his behalf by virtue of an agreement delegating the exercise of that function⁹.

Anything done or omitted to be done by the Agency (or an employee of the Agency) in, or in connection with, the exercise or purported exercise of the function is to be treated for all purposes as done or omitted to be done by that minister in his capacity as such¹⁰. This provision does not apply, however, for the purposes of: (a) so much of any agreement made between the minister and the Agency as relates to the exercise of the function¹¹; or (b) any criminal proceedings brought in respect of anything done or omitted to be done in connection with the exercise or purported exercise of the function¹².

An agreement delegating a function to the Agency (or any of its employees) does not prevent a Minister of the Crown exercising any function to which the agreement relates¹³.

1 This power is in addition to any other power by virtue of which functions of the minister may be exercised by other persons on his behalf: Environment Act 1995 s 38(9).

2 For these purposes, 'Minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363): Environment Act 1995 s 38(10).

3 As to the establishment of the Environment Agency see PARA 68.

4 I.e with or without payment: see the Environment Act 1995 s 38(1).

5 Environment Act 1995 s 38(1). 'Eligible function' means any function of a Minister of the Crown which the Secretary of State, having regard to the functions conferred or imposed upon the Agency under or by virtue of the Environment Act 1995 or any other enactment, considers can appropriately be exercised by the Agency (or any of its employees) on behalf of that minister: s 38(10). However, no such agreement may authorise the Agency (or any of its employees) to exercise on behalf of a Minister of the Crown any function which consists of a power to make regulations or other instruments of a legislative character or a power to fix fees or charges: s 38(2). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

- 6 Environment Act 1995 s 38(3).
- 7 Environment Act 1995 s 38(8)(a).
- 8 Environment Act 1995 s 38(8)(b).
- 9 Environment Act 1995 s 38(8).
- 10 Environment Act 1995 s 38(5). This provision applies where, by virtue of an agreement under s 38, the Agency (or any of its employees) is authorised to exercise any function of a Minister of the Crown: s 38(4).
- 11 Environment Act 1995 s 38(6)(a).
- 12 Environment Act 1995 s 38(6)(b).
- 13 Environment Act 1995 s 38(7).

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87. Annual reports.

As soon as reasonably practicable after the end of each financial year¹, the Environment Agency² must prepare a report on its activities during that year and send a copy of it to each of the appropriate ministers³. The report must set out any directions⁴ given to the Agency during that year, other than directions⁵ which are identified to the Agency in writing by the appropriate minister⁶ as being directions the disclosure of which would, in his opinion, be contrary to the interests of national security⁷. The report must be in such form and contain such information as may be specified in any direction given to the Agency by the appropriate ministers⁸. The Secretary of State must lay a copy of every such report before each House of Parliament and arrange for copies of every such report to be published in such manner as he considers appropriate⁹.

1 'Financial year' means a period of 12 months ending on 31 March: Environment Act 1995 s 124(1).

2 As to the establishment of the Environment Agency see PARA 68.

3 Environment Act 1995 s 52(1). For these purposes, 'appropriate ministers' means the Secretary of State: s 56(1). See also PARA 68 note 4. These provisions also refer to the Minister of Agriculture, Fisheries and Food, but his functions are now the responsibility of the Secretary of State (see PARA 58 note 1). As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. For coverage of annual reports see the Environment Agency's website which was, at the date at which this volume states the law, www.environment-agency.gov.uk.

4 le directions under the Environment Act 1995 s 40: see PARA 74.

5 le directions under the Environment Act 1995 s 40(1): see PARA 74.

6 As to the meaning of 'appropriate minister' see PARA 68 note 4.

7 Environment Act 1995 s 52(2).

8 Environment Act 1995 s 52(4).

9 Environment Act 1995 s 52(3).

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88. Information.

The Environment Agency¹ is under a duty to furnish the appropriate minister² with such information as he may reasonably require³ relating to the Agency's property, the carrying out and proposed carrying out of its functions, and its responsibilities generally⁴. The information must be furnished in such form and manner, and accompanied or supplemented by such explanations, as the appropriate minister may reasonably require⁵. The Agency must permit any person authorised for the purpose by the appropriate minister to inspect and make copies of the contents of any accounts or other records⁶ of the Agency and give such explanation of them as that person or the appropriate minister may reasonably require⁷.

1 As to the establishment of the Environment Agency see PARA 68.

2 As to the meaning of 'appropriate minister' see PARA 68 note 4.

3 A requirement for these purposes must be contained in a direction which may describe the information to be furnished in such manner as the minister giving the direction considers appropriate and may require the information to be furnished on a particular occasion, in particular circumstances or from time to time: Environment Act 1995 s 51(4).

4 Environment Act 1995 s 51(1). The information which the Agency may be required to furnish to the appropriate minister under these provisions includes information which, although it is not in the Agency's possession or would not otherwise come into its possession, is information which it is reasonable to require the Agency to obtain: s 51(3).

5 Environment Act 1995 s 51(2).

6 Without prejudice to the generality of the expression, 'records' includes computer records and any other records kept otherwise than in a document: Environment Act 1995 s 124(1).

7 Environment Act 1995 s 51(5).

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89. Inquiries and other hearings.

Without prejudice to any other provision of the Environment Act 1995 or any other enactment by virtue of which an inquiry or other hearing is authorised or required to be held, the appropriate minister¹ may cause an inquiry or other hearing to be held if it appears to him expedient to do so in connection with any of the functions of the Environment Agency² or in connection with any of his functions in relation to the Agency³.

1 As to the meaning of 'appropriate minister' see PARA 68 note 4.

2 As to the establishment of the Environment Agency see PARA 68.

3 Environment Act 1995 s 53(1)(a), (b). The Local Government Act 1972 s 250(2)-(5) applies to inquiries or other hearings under the Environment Act 1995 s 53 or any other enactment in connection with any of the functions of the Agency, or in connection with any functions of the Secretary of State in relation to the Agency, as they apply to inquiries under the Local Government Act 1972 s 250, but taking the reference in s 250(4) to a local authority as including a reference to the Agency: Environment Act 1995 s 53(2). See further **LOCAL GOVERNMENT** vol 69 (2009) PARA 105. As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

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C. FINANCIAL PROVISIONS

90. General financial duties and powers.

After consultation with the Environment Agency¹, and with the approval of the Treasury², the appropriate ministers³ may determine the financial duties of the Agency and must give the Agency notice of such determinations⁴.

After consultation with the Treasury and the Agency, the appropriate minister⁵ may give a direction to the Agency requiring it to pay to him an amount equal to the whole, or such part as may be specified, of any sum, or any sum of a specified description, which is or has been received by the Agency⁶. If it appears to the appropriate minister that the Agency has a surplus, whether on capital or revenue account, he may after consultation with the Treasury and the Agency, direct the Agency to pay him such amount not exceeding the amount of that surplus as may be specified in the direction⁷.

1 As to the establishment of the Environment Agency see PARA 68.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

3 As to the meaning of 'appropriate ministers' see PARA 87 note 3.

4 Environment Act 1995 s 44(1), (2) (s 44(1) amended by SI 1999/1820). Different determinations may be made for different functions and activities of the Agency: Environment Act 1995 s 44(1) (as so amended). Such a determination may relate to a period beginning before, on, or after the date on which it is made, contain supplemental provisions, and be varied by a subsequent determination: s 44(2)(a)-(c). The power to make a determination under s 44(1) is subject to the Water Resources Act 1991 s 118 (special duties with respect to flood defence revenue) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 611); Environment Act 1995 s 44(5)(a).

5 As to the meaning of 'appropriate minister' see PARA 68 note 4.

6 Environment Act 1995 s 44(3) (amended by SI 1999/1820). The power to give a direction under the Environment Act 1995 s 44(3) is subject to the Water Resources Act 1991 s 118(1)(a) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 611) and s 119(1) (certain funds raised under local enactments to be used for particular purposes): Environment Act 1995 s 44(5)(b).

7 Environment Act 1995 s 44(4) (amended by SI 1999/1820). The power to give such a direction is subject to the Water Resources Act 1991 s 118(1)(b) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 611) and s 119(2) (certain funds raised under local enactments to be disregarded): Environment Act 1995 s 44(5)(c).

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91. Accounts and records.

The Environment Agency¹ must keep proper accounts and proper accounting records², and prepare in respect of each accounting year³ a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the Agency⁴. Every statement of accounts so prepared by the Agency must comply with any requirement that the appropriate ministers⁵ have, with the consent of the Treasury⁶, notified in writing to the Agency and that relates to any of the following matters: (1) the information to be contained in the statement; (2) the manner in which that information is to be presented; (3) the methods and principles according to which the statement is to be prepared⁷.

1 As to the establishment of the Environment Agency see PARA 68.

2 Environment Act 1995 s 45(1)(a). 'Accounting records' includes all books, papers and other records of the Agency relating to, or to matters dealt with in, the accounts required to be kept under s 45: s 45(3).

3 'Accounting year' means, in relation to the Agency, a financial year: Environment Act 1995 s 45(3). As to the meaning of 'financial year' see PARA 87 note 1. However, if the Secretary of State so directs in relation to any accounting year of the Agency, that accounting year is to end with such date other than the next 31 March as may be specified in the direction; and where the Secretary of State has given such a direction, the following accounting year will begin with the day after the date so specified and, subject to any further direction so given, will end with the next 31 March: s 45(4). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Environment Act 1995 s 45(1)(b). For coverage of accounts see the Environment Agency's website which was, at the date at which this volume states the law, www.environment-agency.gov.uk.

5 As to the meaning of 'appropriate ministers' see PARA 87 note 3.

6 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

7 Environment Act 1995 s 45(2) (amended by SI 1999/1820).

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92. Audit.

The accounts¹ of the Environment Agency², with the exception of those accounts of the Agency that relate to a financial year ending on or after 31 March 2004, must be audited by an auditor appointed³ for each accounting year⁴ by the Secretary of State⁵. A copy of the audited accounts and the report made on those accounts by the auditor must be sent to the appropriate ministers⁶ as soon as reasonably practicable after the report is received by the Agency; and the Secretary of State must lay before each House of Parliament a copy of those accounts and that report⁷.

The Agency must send a copy of its accounts in respect of each financial year ending on or after 31 March 2004 to the Comptroller and Auditor General⁸ as soon as reasonably practicable after the end of the financial year to which the accounts relate⁹. The Comptroller and Auditor General must examine, certify and report on any accounts sent to him by the Agency and must lay before each House of Parliament a copy of those accounts and his report on them¹⁰.

The Comptroller and Auditor General may inspect the contents of all accounts and accounting records¹¹ of the Agency, and may report to the House of Commons the results of any such inspection¹².

1 'Accounts', in relation to the Environment Agency, includes any statement prepared under the Environment Act 1995 s 45 (see PARA 91): s 46(5).

2 As to the establishment of the Environment Agency see PARA 68.

3 A person is not qualified for appointment as auditor unless he is eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264) (see **COMPANIES** vol 15 (2009) PARA 1016 et seq); and if the appointment were an appointment as a statutory auditor, he would not be prohibited from acting by virtue of s 1214 (independence requirement) (see **COMPANIES** vol 15 (2009) PARA 971): Environment Act 1995 s 46(2) (amended by SI 2008/948).

4 As to the meaning of 'accounting year' see PARA 91 note 3; definition applied by Environment Act 1995 s 46(5).

5 Environment Act 1995 s 46(1) (amended by SI 2003/1326). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

6 As to the meaning of 'appropriate ministers' see PARA 87 note 3.

7 Environment Act 1995 s 46(3).

8 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726. The Secretary of State may by order provide that functions of the Comptroller and Auditor General, in relation to the exercise by the Environment Agency of its Welsh functions, are also to be functions of the Auditor General of Wales: see the Government of Wales Act 1998 s 147 (amended by the Government of Wales Act 2006 Sch 10 paras 41, 51(1)-(4)); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 Environment Act 1995 s 46(3A) (s 46(3A), (3B) added by SI 2003/1326).

10 Environment Act 1995 s 46(3B) (as added: see note 9).

11 As to the meaning of 'accounting records' see PARA 91 note 2; definition applied by Environment Act 1995 s 46(5).

12 Environment Act 1995 s 46(4). The National Audit Act 1983 s 6 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 717) accordingly applies to the Agency: Environment Act 1995 s 46(4).

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93. Grants to the Environment Agency.

The appropriate minister¹ may, with the approval of the Treasury², make to the Environment Agency³ grants of such amounts and on such terms as he thinks fit⁴.

1 As to the meaning of 'appropriate minister' see PARA 68 note 4.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

3 As to the establishment of the Environment Agency see PARA 68.

4 Environment Act 1995 s 47 (amended by SI 1999/1820).

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94. Borrowing powers of the Environment Agency.

The Environment Agency¹ may borrow² in accordance with the following provisions but not otherwise³. The Agency may, with the consent⁴ of the appropriate minister⁵ and the approval of the Treasury⁶, borrow temporarily in sterling, by way of overdraft or otherwise, from persons other than the appropriate ministers⁷, such sums as it may require for meeting its obligations and carrying out its functions⁸. The Agency may borrow from the appropriate minister, by way of temporary loan or otherwise, such sums in sterling as it may require for meeting its obligations and carrying out its functions⁹. The aggregate amount outstanding in respect of the principal of sums borrowed by the Agency must not at any time exceed £100 million or such greater sum, not exceeding £160 million, as the ministers¹⁰ may specify by order¹¹.

1 As to the establishment of the Environment Agency see PARA 68.

2 As to government guarantees of the Agency's borrowing see PARA 96.

3 Environment Act 1995 s 48(1).

4 Any such consent may be granted subject to conditions: Environment Act 1995 s 48(4).

5 As to the meaning of 'appropriate minister' see PARA 68 note 4.

6 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

7 As to the meaning of 'appropriate ministers' see PARA 87 note 3. As to the powers of the appropriate minister to lend such sums see PARA 95.

8 Environment Act 1995 s 48(2) (amended by the Public Finance and Accountability (Scotland) Act 2000 Sch 1 paras 7(1), (2)(a); and SI 1999/1820).

9 Environment Act 1995 s 48(3) (amended by the Public Finance and Accountability (Scotland) Act 2000 Sch 1 paras 7(1), (2)(a)).

10 As to the meaning of 'ministers' see PARA 72 note 9.

11 Environment Act 1995 s 48(5)(a). The power to make such an order is exercisable by statutory instrument, but no order may be made unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons: s 48(6). At the date at which this volume states the law no such order had been made.

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95. Government loans to the Environment Agency.

The appropriate minister¹ may, with the approval of the Treasury², lend to the Environment Agency³ any sums which the Agency has power to borrow⁴ from him⁵. The Treasury may issue to any of the appropriate ministers⁶, out of the National Loans Fund⁷ or out of money provided by Parliament⁸, such sums as are necessary to enable him to make such loans to the Agency⁹. The Agency must repay any such loan with interest at such rates and at such times as that minister may with the approval of the Treasury from time to time determine¹⁰. Sums received in repayment by a Minister of the Crown must be paid into the National Loans Fund or into the Consolidated Fund¹¹. If in any financial year¹² either of the appropriate ministers lends any sums to the Agency in pursuance of these provisions, he must prepare in respect of that financial year an account¹³ of the sums lent by him and send that account to the Comptroller and Auditor General before the end of September in the following financial year¹⁴. The Comptroller and Auditor General must examine, certify and report on each account so submitted and must lay copies of it and of his report before each House of Parliament¹⁵.

1 As to the meaning of 'appropriate minister' see PARA 68 note 4.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

3 As to the establishment of the Environment Agency see PARA 68.

4 Ie under the Environment Act 1995 s 48(3): see PARA 94.

5 Environment Act 1995 s 49(1) (amended by SI 1999/1820).

6 As to the meaning of 'appropriate ministers' see PARA 87 note 3.

7 As to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq.

8 This provision does not apply in so far as such a sum is payable by the National Assembly for Wales. As to the National Assembly for Wales see PARA 59; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 Environment Act 1995 s 49(5).

10 Environment Act 1995 s 49(2) (amended by SI 1999/1820).

11 Environment Act 1995 s 49(5). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

12 As to the meaning of 'financial year' see PARA 87 note 1.

13 The form of the account and the manner of preparing it must be such as the Treasury may direct: Environment Act 1995 s 49(3).

14 Environment Act 1995 s 49(3). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 724 et seq. The Secretary of State may by order provide that functions of the Comptroller and Auditor General, in relation to the exercise by the Environment Agency of its Welsh functions, are also to be functions of the Auditor General of Wales: see the Government of Wales Act 1998 s 147 (amended by the Government of Wales Act 2006 Sch 10 paras 41, 51(1)-(4)); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

15 Environment Act 1995 s 49(4).

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96. Government guarantees of borrowing.

The appropriate minister¹ may, with the consent of the Treasury², guarantee in such manner and on such conditions as he thinks fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sum which the Environment Agency³ borrows from any person⁴. A minister who gives such a guarantee must forthwith lay a statement of the guarantee before each House of Parliament⁵. Where any sum is paid out for fulfilling such a guarantee, the minister who gave the guarantee must, as soon as reasonably practicable after the end of each financial year⁶, lay before each House of Parliament a statement relating to that sum⁷. If any sums are paid out in fulfilment of such a guarantee the Agency must make to the minister who gave the guarantee, at such times and in such manner as he may from time to time direct, payments of such amounts as the minister may so direct⁸ in or towards repayment of the sums so paid out and payments of interest, at such rate as the minister may direct, on what is outstanding for the time being in respect of sums so paid out⁹.

1 As to the meaning of 'appropriate minister' see PARA 68 note 4.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

3 As to the establishment of the Environment Agency see PARA 68.

4 Environment Act 1995 s 50(1) (amended by SI 1999/1820). As to the Agency's borrowing powers see PARA 94.

5 Environment Act 1995 s 50(2).

6 I.e. beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and interest on it is finally discharged: Environment Act 1995 s 50(3). As to the meaning of 'financial year' see PARA 87 note 1.

7 Environment Act 1995 s 50(3).

8 The consent of the Treasury is required for the giving of such a direction: see the Environment Act 1995 s 50(4) (amended by SI 1999/1820).

9 Environment Act 1995 s 50(4) (as amended: see note 8).

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D. CHARGING SCHEMES

97. Power to make scheme imposing charges for licences.

In the case of any particular licence relating to the abstraction and impounding of water¹, the Environment Agency² may require the payment to it of such charges as may from time to time be prescribed³. In relation to other environmental licences⁴, there must be charged by and paid to the Agency such charges as may from time to time be prescribed⁵.

As respects environmental licences, charges may be prescribed in respect of:

- 41 (1) the grant or variation of an environmental licence, or any application for, or for a variation of, such a licence⁶;
- 42 (2) the subsistence of an environmental licence⁷;
- 43 (3) the transfer (where permitted) of an environmental licence to another person, or any application for such a transfer⁸;
- 44 (4) the renewal (where permitted) of an environmental licence, or any application for such a renewal⁹;
- 45 (5) the surrender (where permitted) of an environmental licence, or any application for such a surrender¹⁰; or
- 46 (6) any application for the revocation (where permitted) of an environmental licence¹¹.

A charging scheme may, as respects environmental licences, provide for different charges to be payable according to the description of environmental licence in question, the description of authorised activity¹² in question, the scale on which the authorised activity in question is carried on, the description or amount of the substance to which the authorised activity in question relates, and the number of different authorised activities carried on by the same person¹³. A charging scheme must specify, in relation to any charge prescribed by the scheme, the description of person who is liable to pay the charge¹⁴. It may also provide that it is a condition of an environmental licence of any particular description that any charge prescribed by a charging scheme in relation to an environmental licence of that description is paid in accordance with the scheme¹⁵. If it appears to the Agency that any charges due and payable to it in respect of the subsistence of an environmental licence have not been paid, it may, in accordance with the appropriate procedure¹⁶, suspend or revoke the environmental licence to the extent that it authorises the carrying on of an authorised activity¹⁷.

A charging scheme may also:

- 47 (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities¹⁸;
- 48 (b) provide for the times at which, and the manner in which, the charges prescribed by the scheme are to be paid¹⁹;
- 49 (c) revoke or amend any previous charging scheme²⁰; and
- 50 (d) contain supplemental, incidental, consequential or transitional provision for the purposes of the scheme²¹.

The Agency may not make a charging scheme unless its provisions have been approved by the Secretary of State²².

1 le any licence under the Water Resources Act 1991 Pt II Ch II (ss 24-72): see **WATER AND WATERWAYS** vol 100 (2009) PARA 214 et seq. If and to the extent that a charging scheme relates to licences under Pt II Ch II, the scheme has effect subject to any provision made by or under ss 125-130 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 273 et seq): Environment Act 1995 s 41(8).

2 As to the establishment of the Environment Agency see PARA 68.

3 Environment Act 1995 s 41(1)(a). 'Prescribed' means specified in, or determined under, a charging scheme made by the Agency: s 41(1). Section 41(1) is expressed to be subject to s 41 and s 42 (see PARA 98): see s 41(1).

4 As to the meaning of 'environmental licence' see PARA 73 note 20.

5 Environment Act 1995 s 41(1)(b) (amended by SI 2007/1711). As a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing EEC Council Directive 91/689 (OJ L337, 31.12.91, p 20) on hazardous waste (see PARA 33) the Agency may require the payment to it of such charges as may from time to time be prescribed: Environment Act 1995 s 41(1)(c) (substituted in relation to England by SI 2005/894; and in relation to Wales by SI 2005/1806; and amended by SI 2007/1306). As a means of recovering costs incurred by it in performing functions conferred by European Parliament and EC Council Regulation 1013/2006 (OJ L190, 12.7.2006, p 1) on shipments of waste (as amended from time to time) the Agency (or SEPA: see PARA 68 note 1) may require the payment to it of such charges as may from time to time be prescribed: Environment Act 1995 s 41(1)(d) (added by SI 2007/1711). As a means of recovering costs incurred by it in performing functions conferred by European Parliament and EC Council Regulation No 850/2004 (OJ L158, 30.4.2004, p 7) on persistent organic pollutants and amending Directive 79/117 (as amended from time to time) the Agency (or SEPA) may require the payment to it of such charges as may from time to time be prescribed: Environment Act 1995 s 41(1)(e) (added by SI 2007/3106). As a means of recovering costs incurred by it in performing functions conferred by regulations made for the purposes of implementing Euratom Council Directive 2006/117 (OJ L337 5.12.2006 p 21) on the supervision and control of shipments of radioactive waste and spent fuel (as amended from time to time) (see PARAS 44, 51) the Agency (or SEPA) may require the payment to it of such charges as may from time to time be prescribed: Environment Act 1995 s 41(1)(f) (added by SI 2008/3087). As a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing European Parliament and EC Council Directive 2006/66 (OJ L266 26.9.2006 p 1) on batteries and accumulators and waste batteries and accumulators (see PARA 37) (as amended from time to time) the Agency (or SEPA) may require the payment to it of such charges as may from time to time be prescribed: Environment Act 1995 s 41(1)(g) (added by SI 2009/890).

Without prejudice to the Environment Act 1995 s 41(1)(b), (2) (see the text and notes 6-11), the following charges may be prescribed under s 41 in relation to permits granted under the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925 (see PARA 260): (1) charges in respect of, or in respect of an application for, the allocation of allowances to an operator; (2) charges in respect of, or in respect of an application for, the retention of allowances by an operator ceasing to carry on an activity to which they relate; (3) charges in respect of the revocation of a greenhouse gas emissions permit; and (4) charges in respect of the subsistence of an account required to be held in the trading scheme registry by an operator: Environment Act 1995 s 41A(1) (s 41A added by SI 2005/925). If the Agency proposes to prescribe operator registry charges, or to amend any provision for such charges included in a charging scheme, the Agency will include in a charging scheme, subject to approval by the Secretary of State, provision giving effect to the proposals: Environment Act 1995 s 41A(2) (as so added). Such a notification must include details of the amount of the proposed charges: s 41A(4) (as so added). A charging scheme made by the Agency may require the payment to the Agency of such charges as may from time to time be prescribed in respect of: (a) the creation of an account in the trading scheme registry other than one that is required to be held by an operator; (b) the subsistence of such an account; (c) the updating of information provided to the Agency in relation to such an account: s 41A(6) (as so added).

6 Environment Act 1995 s 41(2)(a).

7 Environment Act 1995 s 41(2)(b). A charging scheme may, for the purposes of s 41(2)(b), impose: (1) a single charge in respect of the whole of any relevant licensed period; (2) separate charges in respect of different parts of any such period; or (3) both such a single charge and such separate charges: s 41(3). For these purposes, 'relevant licensed period' means the period during which an environmental licence is in force or such part of that period as may be prescribed: s 41(3). See note 6.

8 Environment Act 1995 s 41(2)(c). See note 6.

9 Environment Act 1995 s 41(2)(d). See note 6.

10 Environment Act 1995 s 41(2)(e). See note 6.

11 Environment Act 1995 s 41(2)(f). See note 6.

12 For these purposes, 'authorised activity' means any activity to which an environmental licence relates: Environment Act 1995 s 41(10).

13 Environment Act 1995 s 41(4).

14 Environment Act 1995 s 41(5)(a).

15 Environment Act 1995 s 41(5)(b).

16 For these purposes, 'appropriate procedure' means such procedure as may be specified or described in regulations made for the purpose by the Secretary of State: Environment Act 1995 s 41(10). Any power to make regulations under s 41 is exercisable by statutory instrument; and a statutory instrument containing any such regulations is subject to annulment pursuant to a resolution of either House of Parliament: s 41(11). As to the regulations made see the Environmental Licences (Suspension and Revocation) Regulations 1996, SI 1996/508. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

17 Environment Act 1995 s 41(6). This provision is without prejudice to s 41(5)(b) (see the text and note 15): see s 41(6).

18 Environment Act 1995 s 41(7)(a).

19 Environment Act 1995 s 41(7)(b).

20 Environment Act 1995 s 41(7)(c).

21 Environment Act 1995 s 41(7)(d).

22 Environment Act 1995 s 41(9). As to the approval of a charging scheme see s 42; and PARA 98.

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98. Approval of charging schemes.

Before submitting a proposed charging scheme¹ to the Secretary of State² for his approval, the Environment Agency³ must, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by the scheme, publish a notice⁴ setting out its proposals and specifying the period within which representations or objections with respect to the proposals may be made to the Secretary of State⁵.

Where any proposed charging scheme has been submitted to the Secretary of State for his approval, he must, in determining whether or not to approve the scheme or to approve it subject to modifications⁶, consider any representations or objections duly made to him and not withdrawn⁷. He must also have regard to the desirability of ensuring that, in the case of each of the descriptions of environmental licence⁸, the amounts recovered by the Environment Agency by way of charges prescribed by charging schemes are the amounts which, taking one year with another, need to be recovered by the Agency to meet such of the costs⁹ and expenses (whether of a revenue or capital nature) which it incurs in carrying out its functions (and, in the case of certain environmental licences¹⁰, which the Food Standards Agency incurs in carrying out certain functions¹¹), as the Secretary of State may consider it appropriate to attribute to the carrying out of those functions in relation to activities to which environmental licences of the description in question relate¹².

Without prejudice to the generality of the expression 'costs and expenses', in determining the amounts of the costs and expenses which the Secretary of State considers it appropriate to attribute to the carrying out of the Environment Agency's or the Food Standards Agency's functions in relation to the activities to which environmental licences of any particular description relate, the Secretary of State must take into account any determination of the Environment Agency's financial duties¹³ and may include amounts in respect of the depreciation of, and the provision of a return on, such assets as are held by the Environment Agency or the Food Standards Agency for purposes connected with the carrying out of the functions in question¹⁴.

The consent of the Treasury¹⁵ is required for the giving of approval to a charging scheme submitted by the Environment Agency¹⁶.

It is the duty of the Environment Agency to take such steps as it considers appropriate for bringing the provisions of any charging scheme made by it which is for the time being in force to the attention of persons likely to be affected by them¹⁷.

1 'Charging scheme' has the same meaning as in the Environment Act 1995 s 41 (see PARA 97): s 42(11).

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the establishment of the Environment Agency see PARA 68.

4 'Notice' means notice in writing: Environment Act 1995 s 124(1).

5 Environment Act 1995 s 42(1).

6 Environment Act 1995 s 42(2). As to the meaning of 'modifications' see PARA 71 note 11.

7 Environment Act 1995 s 42(2)(a).

8 Ie in each of the descriptions of environmental licence specified in the definition of 'environmental licence' in the Environment Act 1995 s 56 (see PARA 73 note 20).

9 As to the meaning of 'costs' see PARA 81 note 2.

10 Ie in the case of environmental licences which are authorisations under the Radioactive Substances Act 1993 s 13(1): see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450.

11 Ie its functions under or in consequence of the Radioactive Substances Act 1993 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450 et seq). As to the Food Standards Agency see **FOOD** vol 18(2) (Reissue) PARA 225 et seq.

12 Environment Act 1995 s 42(2)(b), (3) (s 42(3) amended by the Food Standards Act 1999 Sch 5 para 44, Sch 6). If and to the extent that any sums recovered by the Environment Agency by way of charges prescribed by charging schemes may fairly be regarded as so recovered for the purpose of recovering the amount required to meet (whether in whole or in part) such of the costs and expenses incurred by the Food Standards Agency as fall within the Environment Act 1995 s 42(3) those sums must be paid by the Environment Agency to the Food Standards Agency: s 42(9) (amended by the Food Standards Act 1999 Sch 5 para 44). For the purposes of the Environment Act 1995 s 42(9), any question as to the extent to which any sums may fairly be regarded as recovered for the purpose of recovering the amount required to meet the costs and expenses falling within s 42(9) must be determined by the Secretary of State: s 42(10) (amended by the Food Standards Act 1999 Sch 5 para 44).

If and to the extent that a charging scheme relates to any licence order under the Water Resources Act 1991 Pt II Ch II (ss 24-72) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 214 et seq), the Secretary of State may consider it appropriate to attribute to the carrying out of the Environment Agency's functions in relation to activities to which such a licence relates any costs and expenses incurred by the Agency in carrying out any of its functions under Pt II (ss 24-81) or under the Environment Act 1995 s 6(2) (see PARA 76): s 42(5). This provision is expressed to be without prejudice to what costs and expenses the Secretary of State may consider it appropriate to attribute to the carrying out of any functions of the Environment Agency or the Secretary of State in relation to activities to which environmental licences of any particular description relate: s 42(6).

13 Ie under the Environment Act 1995 s 44: see PARA 90.

14 Environment Act 1995 s 42(4) (amended by the Food Standards Act 1999 Sch 5 para 44).

15 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

16 Environment Act 1995 s 42(7) (amended by the Food Standards Act 1999 Sch 5 para 44, Sch 6; and SI 1999/1820).

17 Environment Act 1995 s 42(8).

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(2) LOCAL ADMINISTRATION

99. Meaning of 'local authority'.

For public health and environmental purposes, local authorities are generally, in relation to England, district councils, London borough councils, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; and, in relation to Wales, county councils or county borough councils¹. In the Isles of Scilly, the public health functions of local authorities are largely exercised by the Council of the Isles of Scilly².

The functions of local authorities may be exercised in port health districts by port health authorities³ and in united districts by joint boards⁴.

¹ As to local authorities generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. The definitions of 'local authority' for the purposes of Acts dealt with in this title are as follows:

- 11 (1) for the purposes of the Public Health Act 1936 (see PARAS 1 note 14, 113 et seq, 855 et seq, 960 et seq, 980 et seq), 'local authority' means the council of a district or London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple, but, in relation to Wales, means the council of a county or county borough (see ss 1(2), 343(1) (s 1 substituted by the Local Government Act 1972 Sch 14 Pt I para 1; and amended by the Local Government (Wales) Act 1994 Sch 9 para 3(1), (2)); and see PARA 1 note 14);
- 12 (2) for the purposes of the Prevention of Damage by Pests Act 1949 Pt I (ss 1-12) (see PARAS 864, 872 et seq), 'local authority' means the Common Council of the City of London and the councils of London boroughs and of districts, provided that: (a) the local authority for any port health district is the port health authority; and (b) in relation to sewers vested in certain councils, the functions of the local authority under Pt I are exercisable by those councils and not by any other authority (see s 1(1) (amended by the London Government Act 1963 Sch 17 para 10; and the Local Government Act 1972 Sch 30));
- 13 (3) for the purposes of the Public Health Act 1961 (see PARAS 1 note 14, 759, 858, 883, 979, 1075, 1078), 'local authority' means, except where the context otherwise requires, the council of a borough or urban district, the Common Council, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, and includes the Council of the Isles of Scilly (see s 2(3) (amended by the London Government Act 1963 Sch 11 Pt I para 33; and the Local Government Act 1972 Sch 30));
- 14 (4) for the purposes of the Public Lavatories (Turnstiles) Act 1963 (see PARA 997), 'local authority' means, in England and Wales, a local authority within the meaning of the Local Government Act 1933 (repealed) (see now the Local Government Act 1972; head (5) below; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 23) or the Common Council of the City of London (see the Public Lavatories (Turnstiles) Act 1963 s 1(5) (amended by the Statute Law (Repeals) Act 1981));
- 15 (5) for the purposes of the Local Government Act 1972 (see PARAS 2, 101, 107, 119-120), 'local authority' means a county council, a district council, a London borough council or a parish council, but, in relation to Wales, means a county council, county borough council or community council (see s 270(1) (definition amended by the Local Government Act 1985 Sch 17; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 57));
- 16 (6) for the purposes of the Control of Pollution Act 1974 Pt III (ss 57-74) (see PARA 819 et seq), 'local authority' means: (a) in England, the council of a district or London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; (b) in Wales, the council of a county or county borough (see s 73(1) (definition amended by the Local Government (Wales) Act 1994 Sch 9 para 10(3), Sch 18));

- 17 (7) for the purposes of the Local Government (Miscellaneous Provisions) Act 1976 (see PARAS 985, 990-991, 1076-1077), 'local authority' means a county council, county borough council, a district council, a London borough council, or the Common Council of the City of London (see s 44(1) (definition substituted by the Local Government Act 1985 Sch 14 Pt II para 53; and amended by Sch 17; and the Local Government and Public Involvement in Health Act 2007 Sch 13 Pt 2 para 33));
- 18 (8) for the purposes of the Refuse Disposal (Amenity) Act 1978 (see PARA 741 et seq), 'local authority' means, in relation to England, a district council, London borough council or the Common Council of the City of London and, in relation to Wales, a county council or county borough council (see s 11(1) (definition amended by the Local Government (Wales) Act 1994 Sch 9 para 11));
- 19 (9) for the purposes of the Local Government (Miscellaneous Provisions) Act 1982 Pt VIII (ss 13-17) (see PARA 973 et seq), 'local authority' means the council of a district, the council of a London borough and the Common Council of the City of London (see s 13(11));
- 20 (10) for the purposes of the Building Act 1984, 'local authority' means the council of a district or London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, but, in relation to Wales, means the council of a county or county borough (see s 126 (definition substituted by the Local Government Act 1985 s 16, Sch 8 para 14(4)(a); and amended by the Local Government (Wales) Act 1994 Sch 9 para 15(3)));
- 21 (11) for the purposes of the Public Health (Control of Disease) Act 1984 (see PARAS 102 et seq, 137 et seq, 884 et seq), 'local authority' means a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple, and, in Wales, a county council or county borough council (see s 1(1), (2) (s 1(1) amended by the Local Government (Wales) Act 1994 Sch 9 para 13(1))) (the Public Health (Control of Disease) Act 1984 s 1(1) prospectively substituted in similar terms and s 1(2) prospectively repealed by the Health and Social Care Act 2008 Sch 1 paras 1, 3, Sch 15 Pt 3);
- 22 (12) for the purposes of the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) (see PARA 159 et seq), 'local authority' means: (a) in Greater London, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple; (b) in England outside Greater London, a district council and the Council of the Isles of Scilly; (c) in Wales, a county council or county borough council (see s 4(11) (amended by the Local Government (Wales) Act 1994 Sch 9 para 17(1); and the Environment Act 1995 Sch 22 para 46, Sch 24));
- 23 (13) for the purposes of the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) (as added and amended) (see PARA 761 et seq), 'local authority' in relation to England and Wales means: (a) any unitary authority; (b) any district council, so far as it is not a unitary authority; (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively; (d) the Council of the Isles of Scilly (see s 78A(1), (9) (s 78A added by the Environment Act 1995 s 57; and definition amended by 2006/1381)); and 'unitary authority' means: (i) the council of a county, so far as it is the council of an area for which there are no district councils; (ii) the council of any district comprised in an area for which there is no county council; (iii) the council of a London borough; (iv) the council of a county borough in Wales (see the Environmental Protection Act 1990 s 78A(1), (9) (as so added));
- 24 (14) for the purposes of the Water Industry Act 1991 generally (see PARA 998 et seq), 'local authority' means the council of a district or of a London borough or the Common Council of the City of London, but, in relation to Wales, means the council of a county or county borough (see s 219(1) (amended by the Local Government (Wales) Act 1994 Sch 11 Pt I para 2(2)); and, for the purposes of the Water Industry Act 1991 Pt IV Ch II (ss 98-117) and ss 199(3), 200 (see PARA 1009), 'local authority' in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple (ss 117(3), 200(5));
- 25 (15) for the purposes of the Clean Air Act 1993 (see PARA 207 et seq), 'local authority' means, in England, the council of a district or a London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple and, in Wales, the council of a county or county borough (see s 64(1) (amended by the Local Government (Wales) Act 1994 Sch 9 para 18, Sch 18));

- 26 (16) for the purposes of the Environment Act 1995 Pt IV (ss 80-91) (see PARA 192 et seq), 'local authority', in relation to England and Wales, means any unitary authority, any district council so far as it is not a unitary authority, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively; and 'unitary authority' means the council of a county so far as it is the council of an area for which there are no district councils, the council of any district comprised in a area for which there is no county council, the council of a London borough, and the council of a county borough in Wales (see s 91(1));
- 27 (17) for the purposes of the Noise Act 1996 (see PARA 848 et seq), 'local authority' means: (a) in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively; (b) outside Greater London, any district council, the council of any county so far as it is the council for any area for which there are no district councils; (c) in Wales, the council of a county borough; and (d) the Council of the Isles of Scilly (see s 11(1)).

As to port health districts and port health authorities see PARA 102 et seq.

For the purposes of the Control of Pollution Act 1974 Pt III, except ss 62-67, and for the purposes of the Environmental Protection Act 1990 Pt III, where the area of a local authority includes part of the seashore, it is deemed also to include the territorial sea lying seawards from that part of the shore: Control of Pollution Act 1974 s 73(2); Environmental Protection Act 1990 s 79(11). As to the extent of the territorial sea see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 123 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

The Secretary of State may by order provide that an urban development corporation (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1428 et seq) is to have in its area (or in such part of its area as may be specified in the order) the functions conferred on a local authority: (A) by the Public Health Act 1936 s 83, s 84 and the Public Health Act 1961 ss 35-37 (see PARAS 855, 858); (B) by so much of the Public Health Act 1936 Pt XII (ss 275-278) as relates to any of the enactments in head (A) above; (C) by the Prevention of Damage by Pests Act 1949 Pt I (ss 1-12) (see PARAS 864, 872 et seq); and (D) by the Public Health (Control of Disease) Act 1984 ss 39-42 (prospectively repealed) and so much of Pt VI (ss 57-79) (s 57 prospectively repealed) as relates to those provisions (see PARAS 2, 63-64, 105, 110, 137 et seq, 884 et seq): see the Local Government, Planning and Land Act 1980 s 159(1); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1486. The Secretary of State may also by order provide that, in relation to premises comprising or consisting of housing accommodation, a housing action trust (see **HOUSING** vol 22 (2006 Reissue) PARA 11) may have in its designated area (or in such part of its designated area as may be specified in the order) the functions conferred on a local authority: (aa) by the Public Health Act 1936 s 83, s 84 and the Public Health Act 1961 s 36 (see PARAS 855, 857); (bb) by so much of the Public Health Act 1936 Pt XII as relates to any of the enactments in head (aa) above; (cc) by the Prevention of Damage by Pests Act 1949 Pt I (see PARAS 864, 872 et seq): see the Housing Act 1988 s 68(1); and **HOUSING** vol 22 (2006 Reissue) PARA 333. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

The functions of a local authority under the Prevention of Damage by Pests Act 1949, in relation to sludge vessels owned by certain councils, are to be exercised by those councils and not by any other authority: see the Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 5 (amended by SI 1965/654).

Where, by an order under the Public Health (Control of Disease) Act 1984 s 2 (see PARA 102), a port health authority has been constituted for any port health district, the port health authority has, as respects its district, the functions conferred or imposed by the Environmental Protection Act 1990 Pt I (prospectively repealed), and by Pt III (ss 79-84) in relation to statutory nuisances other than a nuisance falling within s 79(1)(g) (see **NUISANCE** vol 78 (2010) PARA 165) or s 79(1)(ga) (see **NUISANCE** vol 78 (2010) PARA 165), and no such order may be made assigning those functions; and 'local authority' and 'area' are to be construed accordingly: ss 4(12), 79(8) (amended by the Noise and Statutory Nuisance Act 1993 s 2(5); and the Clean Neighbourhoods and Environment Act 2005 s 102(1), (7)). As to statutory nuisances see generally **NUISANCE**.

2 See the Isles of Scilly (Functions) Order 1979, SI 1979/72, art 3 (amended by SI 1990/2486; SI 2005/1082). See also note 1.

3 See PARA 102 et seq. The Public Health (Control of Disease) Act 1984 provides that a local authority having jurisdiction in any part of a port health district (including the London port health district) may not discharge in relation to it any functions which are functions of the port health authority: s 1(3). See also note 4.

4 See PARA 101. The Public Health (Control of Disease) Act 1984 provides that s 1(1) (see note 1 head (11)) has effect subject to the provisions of that Act with respect to:

- 28 (1) port health authorities;

29 (2) strategic health authorities, local health boards, special health authorities or primary care trusts;

30 (3) county councils or county borough councils,

and does not impose on any authority specified in s 1(1) a duty to discharge, in relation to a united district constituted under the Public Health Act 1936 s 6 (see PARA 101), any function which is a function of the joint board for that district: Public Health (Control of Disease) Act 1984 s 1(4) (amended by the Local Government (Wales) Act 1994 Sch 9 para 13(1); the Health Authorities Act 1995 Sch 1 Pt III para 108; SI 2000/90; SI 2002/2469; and SI 2007/961). The Public Health (Control of Disease) Act 1984 s 1(4) is repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 3(1), (3), Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume state the law no such day had been appointed.

Where a port health authority or joint board has functions, rights or liabilities under the Clean Air Act 1993: (a) any reference in that Act to a local authority or its district includes, in relation to those functions, rights or liabilities, a reference to the port health authority or board or its district; (b) for the purposes of that Act, no part of the district of any such port health authority or board is to be treated, in relation to any matter falling within the competence of the authority or board, as forming part of the district of any other authority: s 61(4). Any premises which extend into the districts of two or more authorities are to be treated for the purposes of the Clean Air Act 1993 as being wholly within such one of those districts as may be agreed by those authorities: s 61(5).

As to the transfer, compensation and superannuation rights of officers when an authority is constituted or dissolved, or any functions of an authority are relinquished, delegated, transferred or re-transferred, or exercised by two or more authorities, or the services of any staff of one authority are rendered available to another authority see the Public Health Act 1936 s 326 (amended by the Public Health (Control of Disease) Act 1984 s 78, Sch 2 para 3; and the Statute Law (Repeals) Act 1995). See also the Public Health Act 1936 s 327 (amended by the Public Health (Control of Disease) Act 1984 Sch 2 para 4; and SI 1949/2393).

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100. London.

Public health and environmental legislation¹ applies in London as it applies elsewhere in England and Wales, but with some modifications².

The Greater London Authority Act 1999 established the Greater London Authority, which consists of the Mayor of London and the London Assembly³. The Greater London Authority has various general functions, among which is the promotion of the improvement of the environment in London⁴. Environmental responsibilities are set out in Part IX of the Greater London Authority Act 1999⁵. In particular, the Mayor of London must produce and publish a report on the state of the environment of Greater London⁶ and a London biodiversity action plan⁷. The Mayor of London must also prepare and publish strategies relating to waste, air quality and noise⁸.

¹ See PARAS 1-3.

² See the London Government Act 1963 ss 40, 42, Sch 11; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 66.

³ See the Greater London Authority Act 1999 ss 1, 2, Sch 1; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 79 et seq.

⁴ See the Greater London Authority Act 1999 s 30; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 80, 175-176.

⁵ See the Greater London Authority Act 1999 Pt IX (ss 351-374).

As to the abolition of the London Ecology Committee see s 374; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 180.

⁶ See the Greater London Authority Act 1999 s 351; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 180. As to Greater London Authority environment reports see the relevant website which was, at the date at which this volume states the law, www.london.gov.uk.

⁷ See the Greater London Authority Act 1999 s 352; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 181.

⁸ As to provisions relating to waste in London see PARA 630; as to provisions relating to air quality in London see PARA 193; and as to provisions relating to noise in London see PARA 854.

The functional bodies must have regard to the strategies published by the Mayor of London under the Greater London Authority Act 1999 Pt IX: see s 373. 'Functional bodies' means: Transport for London, the London Development Agency, the Metropolitan Police Authority and the London Fire and Emergency Planning Authority: see s 424(1); and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 213. As to Transport for London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 218, 269 et seq. As to the London Development Agency see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 215; **TRADE AND INDUSTRY** vol 97 (2010) PARA 988 et seq. As to the Metropolitan Police Authority see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 216; **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 217.

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101. United districts and joint boards.

The Secretary of State¹ may, for any purpose of the Public Health Acts 1875 to 1925², the Public Health Act 1936, the provisions of the Prevention of Damage by Pests Act 1949 relating to the destruction of rats and mice³, the Public Health (Control of Disease) Act 1984⁴, the Building Act 1984⁵ or the Clean Air Act 1993⁶, by order⁷ constitute a united district, consisting of the districts⁸ or parts of the districts of several local authorities⁹. The governing body of a united district is a joint board constituted by the order constituting the district¹⁰, which is a body corporate with perpetual succession and a common seal¹¹. The joint board consists of representatives of the local authorities of the constituent districts or parts of districts¹², and may include representatives of the county council if that council undertakes to make annual contributions to the board's expenses¹³.

A local authority having jurisdiction in any part of a united district ceases to discharge in relation to it any functions which are functions of the joint board¹⁴.

The order forming a joint board¹⁵ may apply to it, subject to any necessary modifications, any of the provisions of the Local Government Act 1972¹⁶.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the Public Health Acts 1875 to 1925 see PARA 2 note 1.

3 I.e. the Prevention of Damage by Pests Act 1949 Pt I (ss 1-12): see PARAS 864, 872 et seq.

4 I.e. the provisions of the Public Health (Control of Disease) Act 1984 except s 46 (see **CREMATION AND BURIAL** vol 10 (Reissue) PARA 920): see PARAS 102 et seq, 137 et seq, 884 et seq.

5 See **BUILDING**.

6 See PARA 207 et seq.

7 Before making the order, the Secretary of State must give notice to the local authority of every district which, or part of which, is proposed to be included in the united district, and to the county council; and if such an authority or council gives notice of objection to him within 28 days and does not withdraw the objection, any order made is subject to special parliamentary procedure: Public Health Act 1936 s 6(4) (amended by SI 1949/2393). In relation to Wales, the requirement for the giving of notice to the county council does not apply: see the Public Health Act 1936 s 6(6) (added by the Local Government (Wales) Act 1994 Sch 9 para 3). As to the meaning of 'local authority' see PARA 99. As to special parliamentary procedure see PARA 60.

An order constituting a united district or joint board may contain such incidental, consequential and supplemental provisions as appear to the Secretary of State to be necessary or proper for bringing the order into operation and giving full effect to it and, in particular, it may contain provisions: (1) for the settlement of any differences arising in consequence of the operation of the order, between districts, parishes or other areas; (2) for the transfer of property and liabilities, and the making of any such adjustment of accounts or apportionment of liabilities between districts, parishes or other areas as may be rendered necessary by the operation of the order; and (3) as to the persons by and to whom any moneys found to be due are to be paid, and the raising of such moneys: Public Health Act 1936 s 9(1) (amended by the Public Health (Control of Disease) Act 1984 Sch 3).

Any such order may be amended or revoked by a subsequent order made by the Secretary of State: see the Public Health Act 1936 s 9(2) (amended by the Public Health (Control of Disease) Act 1984 Sch 3; and SI 1949/2393). Where the Secretary of State proposes to make an order under this provision, he must give notice to the joint board concerned and to every authority or council which is, or which under the proposed order will be, a constituent authority or council; and if within 28 days after such notice has been given the board,

authority or council gives notice to the Secretary of State that it objects to the proposal and the objection is not withdrawn, any order made by the Secretary of State is subject to special parliamentary procedure: see the Public Health Act 1936 s 9(2) (as so amended).

Any reference in the Public Health Act 1936 to an order constituting a united district or joint board is to be construed as including a reference to any order made under s 9(2) for the amendment of the original order: s 9(3) (amended by the Public Health (Control of Disease) Act 1984 Sch 3).

8 In the Public Health Act 1936, 'district', in relation to a local authority in Greater London, means a London borough, the City of London, the Inner Temple or the Middle Temple, as the case may be; and, in relation to a local authority in Wales, means a county or, as the case may be, county borough: s 1(2) (s 1 substituted by the Local Government Act 1972 Sch 14 para 1; and definition amended by the Local Government (Wales) Act 1994 Sch 9 para 3). In relation to local authorities outside Greater London and Wales, 'district' is not defined in the Public Health Act 1936. As to local authorities and their districts generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

9 See the Public Health Act 1936 s 6(1) (amended by the Public Health (Control of Disease) Act 1984 Sch 2 para 1; and the Building Act 1984 Sch 6 para 2); the Prevention of Damage by Pests Act 1949 s 1(3); and the Clean Air Act 1993 s 61(1). See also note 10. As to the joint exercise of local authority functions in relation to air quality see also PARAS 204, 217 note 1. An order may also be made for the purposes of the Food Safety Act 1990: see s 59(1), Sch 3 para 1. As to food safety see **FOOD** vol 18(2) (Reissue) PARA 282 et seq; and as to enforcement and administration see **FOOD** vol 18(2) (Reissue) PARA 222 et seq.

An order is generally made only upon the application of the local authorities concerned, or any of them (see the Public Health Act 1936 s 6(1) (as so amended)), although an area designated as the site of a new town may be constituted a united district without such an application (see the New Towns Act 1981 s 33; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1321).

10 Public Health Act 1936 s 6(2). In the Public Health Act 1936, 'joint board' means a joint board constituted under that Act or under any Act repealed by it, other than a port health authority: s 343(1) (amended by the Public Health (Control of Disease) Act 1984 Sch 2 para 5). As to port health authorities see PARA 102 et seq.

All expenses of and incidental to the constitution of a united district are payable by the joint board and, so far as they are incurred by the Secretary of State, the amount as certified by him is recoverable by him from the board as a debt due to the Crown: Public Health Act 1936 s 6(5). As to the finances of joint boards see further PARA 106.

Relief from stamp duty is given on transfers of property under the order to the joint board from another local authority: see the Finance Act 1952 s 74(1) (amended by the Finance Act 1974 Sch 12 para 6); and **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1050.

For the power to make consequential and supplementary provision following local government reorganisation see the Local Government Act 1972 s 259; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 7.

11 Public Health Act 1936 s 6(3) (amended by the Charities Act 1960 Sch 7 Pt II).

12 Public Health Act 1936 s 6(2).

13 See the Public Health Act 1936 s 6(2) proviso. The county council representatives must comprise less than half the membership of the board: see s 6(2) proviso. In relation to Wales, this proviso does not apply: see s 6(6) (as added: see note 7).

Existing joint boards were continued after local government reorganisation, except in relation to joint boards for port health districts (see PARA 102 et seq) and except where the joint board was exercising functions for an area which on 1 April 1974 became wholly within the area of a single local authority by which alone, but for the existence of the joint board, those functions would be exercisable: see the Local Government Act 1972 s 263(1), (2); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 10.

14 Public Health Act 1936 s 7 (amended by the Local Government Act 1972 Sch 14 para 3, Sch 30).

15 Is whether the order is made under an enactment passed before or after 1 April 1974: see the Local Government Act 1972 s 241.

16 See the Local Government Act 1972 s 241. This power applies only where the constituent members of the joint board are local authorities and where it is formed for the discharge of any of the functions of those authorities: see s 241.

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102. Port health districts and authorities.

The Secretary of State¹ may by order made by statutory instrument constitute a port health district either: (1) consisting of any area, being a port² or part of a port other than the Port of London, or of two or more such areas³; or (2) consisting of such an area, or of two or more such areas, together with so much (being either the whole or any part or parts) of the district or districts of one or more riparian authorities⁴ (not being comprised in that area or any of those areas, as the case may be) as is specified in the order⁵. Such an order may either: (a) constitute one riparian authority as the port health authority for the district⁶; or (b) constitute a joint board, consisting of representatives of two or more riparian authorities, to be the port health authority for the district⁷.

An order constituting a port health district: (i) confers on the port health authority jurisdiction over all waters and land within the port health district⁸; and (ii) may assign to the port health authority any of the functions, rights and liabilities of a local authority under any enactment relating to public health, waste disposal or the control of pollution, whether passed before or after, and whether or not contained in, the Public Health (Control of Disease) Act 1984⁹.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 For the purposes of the Public Health (Control of Disease) Act 1984, 'port' means: (1) a port as appointed for the purposes of the enactments for the time being in force relating to revenue or customs other than the Port of London; or (2) the Port of London: ss 2(1), 74. As to the meaning of 'Port of London' see PARA 103 note 1. As to the Port of London see PARA 103; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 623 et seq. As to ports generally see **PORTS AND HARBOURS**. As to enactments relating to revenue or customs see **CUSTOMS AND EXCISE**.

3 Public Health (Control of Disease) Act 1984 s 2(3)(a).

4 For the purposes of the Public Health (Control of Disease) Act 1984, 'riparian authority', in relation to a port or part of a port, means: (1) any local authority whose district, or any part of whose district, forms part of, or abuts on, that port or part of a port; and (2) any conservators, commissioners or other persons having authority in, over or within that port or part of a port: ss 2(2), 74. As to the meaning of 'local authority' see PARA 99.

5 Public Health (Control of Disease) Act 1984 s 2(3)(b). Where the Secretary of State proposes to make an order under these provisions, he must give notice of the proposal to every riparian authority who will under the order be liable to contribute to the expenses of the port health authority: s 2(6). If, within 28 days after notice has been given to any such riparian authority, the authority gives notice to the Secretary of State that it objects to the proposal and the objection is not withdrawn, any order made by the Secretary of State which will impose any such liability on that authority is subject to special parliamentary procedure: s 2(7). As to special parliamentary procedure see PARA 60.

An order may contain such incidental, consequential and supplementary provisions as appear to the Secretary of State to be necessary or proper for bringing it into operation and giving it full effect and, in particular, provisions: (1) for the settlement of any differences arising in consequence of the operation of the order between districts or other areas; (2) for the transfer of property and liabilities, and the making of any such adjustment of accounts or apportionment of liabilities between districts or other areas as may be rendered necessary by the operation of the order; and (3) as to the persons by or to whom any money found to be due is to be paid, and the raising of such money: s 4(1).

Where the Secretary of State proposes to make an order amending or revoking an order under s 2, he must give notice of his intention to the port health authority concerned and to every authority which is, or under the proposed order will be, a constituent authority: s 4(2). If, within 28 days after notice has been given to any such authority, the authority gives notice to the Secretary of State that it objects to the proposal and the objection is not withdrawn, any order made by the Secretary of State is subject to special parliamentary procedure: s 4(3).

Where by virtue of s 2(7) or s 4(3) an order (not being an order made on the application of a local authority) is subject to special parliamentary procedure: (a) the Local Government Act 1972 s 240 (which relates to the procedure for making such orders) has effect as if, for references to the applicants for the order and to the application for the order, there were substituted respectively references to the Secretary of State and to the order proposed to be made by him; and (b) the expenses incurred by the Secretary of State in connection with the making and confirmation of the order are to be paid by such council, or by such councils in such shares, as he may direct, and the amount of those expenses as certified by him, or the amount of any share of them so certified, is recoverable by him from the council liable for the expenses or share as a debt due to the Crown: Public Health (Control of Disease) Act 1984 s 4(4).

Any reference in the Public Health (Control of Disease) Act 1984 to an order constituting a port health district is to be construed as including a reference to any order made under s 4 for the amendment of the original order: s 4(5).

6 Public Health (Control of Disease) Act 1984 s 2(4)(a). All expenses of, and incidental to, the constitution of a port health district are payable by the port health authority: s 2(8). So far as those expenses are expenses incurred by the Secretary of State, their amount as certified by him is recoverable by him from the authority as a debt due to the Crown: s 2(9). As to the finances of a port health authority see further PARA 106.

7 Public Health (Control of Disease) Act 1984 s 2(4)(b). See also note 6. A joint board so constituted a port health authority is a body corporate by such name as may be determined by the order constituting the port health district: s 2(5).

8 Public Health (Control of Disease) Act 1984 s 3(1)(a).

9 Public Health (Control of Disease) Act 1984 s 3(1)(b). An order may also assign to the port health authority any of the functions, rights and liabilities of: (1) a food authority under the Food Safety Act 1990 (see **FOOD** vol 18(2) (Reissue) PARA 251 et seq); (2) a local authority under the Slaughterhouses Act 1974 Pt I (ss 14-35) (see **FOOD** vol 18(2) (Reissue) PARA 474); or (3) a local authority under the Local Government (Miscellaneous Provisions) Act 1976 s 16 (power of local authorities to obtain particulars of persons interested in land) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 23), s 32 (power of local authorities to execute works outside their areas) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24), s 41 (evidence of resolutions and minutes of proceedings etc) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 23): Public Health (Control of Disease) Act 1984 s 3(2) (amended by the Food Safety Act 1990 Sch 3 para 26).

The Local Government Act 1972 s 241 (which enables any of the provisions of that Act to be applied to a joint board of which the constituent members are local authorities: see PARA 101) applies in relation to a port health authority constituted under the Public Health (Control of Disease) Act 1984 s 2, notwithstanding that it may consist of a single local authority or may be a joint board of which not all the constituent members are local authorities: s 3(3).

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103. Port health district and port health authority for Port of London.

For the purposes of the Public Health (Control of Disease) Act 1984, the Port of London¹, together with so much (being either the whole or any part or parts) of the district or districts of one or more riparian authorities² as (not being comprised in the Port of London) may be specified in an order made by the Secretary of State³, is a port health district (the 'London port health district'); and the Common Council of the City of London is the port health authority for that district⁴. The Secretary of State may by order confer on the port health authority for the London port health district (the 'London port health authority') jurisdiction over all waters and land within that port health district⁵. The Secretary of State may by order assign to the London port health authority certain functions, rights and liabilities of a local authority⁶.

1 In the Public Health (Control of Disease) Act 1984, 'Port of London' means the port of that name appointed for the purposes of the enactments relating to revenue or customs, together with all such waters between:

- 31 (1) the seaward limit of the port as so established (s 6(a)); and
- 32 (2) imaginary straight lines drawn from latitude 51 degrees 37 minutes 00 seconds north, longitude 00 degrees 57 minutes 19 seconds east (Foulness Point in the county of Essex) to latitude 51 degrees 46 minutes 05 seconds north, longitude 01 degrees 20 minutes 32 seconds east (Gunfleet Old Lighthouse) and thence to latitude 51 degrees 26 minutes 36 seconds north, longitude 01 degrees 25 minutes 30 seconds east and thence to latitude 51 degrees 24 minutes 55 seconds north, longitude 00 degrees 54 minutes 21 seconds east (Warden Point in the county of Kent) (s 6(b)),

as immediately before the coming into force of the Territorial Sea Act 1987 were within the territorial waters of Her Majesty's dominions: Public Health (Control of Disease) Act 1984 ss 6, 74 (s 6 amended by the Territorial Sea Act 1987 Sch 1 para 8). As to the Port of London generally see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 623 et seq. As to the territorial sea see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 121 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 31. As to enactments relating to revenue or customs see **CUSTOMS AND EXCISE**.

2 As to the meaning of 'riparian authority' see PARA 102 note 4.

3 The power to make an order under the Public Health (Control of Disease) Act 1984 s 7 is exercisable by statutory instrument: s 7(6). Section 4 has effect in relation to an order under s 7 as it has effect in relation to an order under s 2 (see PARA 102): s 8(1). See the London Port Health Authority Order 1965, SI 1965/617 (amended by SI 1980/215) (made under earlier legislation). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Public Health (Control of Disease) Act 1984 s 7(1).

5 Public Health (Control of Disease) Act 1984 s 7(2).

6 See the Public Health (Control of Disease) Act 1984 s 7(3). As to the meaning of 'local authority' see PARA 99. The Secretary of State may assign any of the functions, rights and liabilities of a local authority under the Public Health Acts 1875 to 1925; the Public Health Act 1936; the Water Acts 1945 and 1948; the Drought Act 1976 (repealed); the Local Government (Miscellaneous Provisions) Act 1953 ss 8, 12 (s 12 repealed); the Clean Air Act 1993; the Public Health Act 1961; the Control of Pollution Act 1974; the Public Health (Control of Disease) Act 1984 (except s 46); the Building Act 1984 (other than Sch 3 Pt III (repealed)); the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed); the Environmental Protection Act 1990 Pt III (ss 79-85); and regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARAS 186-188): see the Public Health (Control of Disease) Act 1984 s 7(3)(a), (4) (amended by the Building Act 1984 Sch 6 para 23; the Environmental Protection Act 1990 Sch 15 para 22; the Clean Air Act 1993 Sch 4 para 3; the Pollution

Prevention and Control Act 1999 Sch 2 para 2; and the Care Standards Act 2000 Sch 4 para 10, Sch 6). As from a day to be appointed, the reference to the Environmental Protection Act 1990 Pt I (prospectively repealed) is repealed: see the Pollution Prevention and Control Act 1999 s 6(2), Sch 3. Also the references to the Water Acts 1945 and 1948; the Drought Act 1976 and the Local Government (Miscellaneous Provisions) Act 1953 ss 8, 12 are repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 5, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such days had been appointed. As to the prospective repeal of the Environmental Protection Act 1990 Pt I see PARA 159 note 2.

The Secretary of State may also assign any of the functions, rights and liabilities of a local authority under any local statutory provision continued in force by the London Government Act 1963 or under any provision of Sch 11 Pt II: see the Public Health (Control of Disease) Act 1984 s 7(3)(b), (c). Functions, rights and liabilities of a food authority under the Food Safety Act 1990 (see **FOOD** vol 18(2) (Reissue) PARA 251 et seq) may also be assigned: see the Public Health (Control of Disease) Act 1984 s 7(3)(d) (substituted by the Food Safety Act 1990 Sch 3 para 27).

The Secretary of State may by order extend to all waters and land in the London port health district any provision under which functions, rights and liabilities may be assigned by an order under the Public Health (Control of Disease) Act 1984 s 7(3), or any instrument made under any such provision, in so far as it would not otherwise so extend: s 7(5).

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104. Authorities in relation to vessels.

For the purposes of the provisions of the Public Health Act 1936 which apply to vessels¹ and for the execution of which local authorities² are responsible³, and for the purposes of the provisions of the Public Health (Control of Disease) Act 1984 which apply to vessels⁴, a vessel lying in any inland or coastal waters⁵ is subject to the jurisdiction of: (1) the port health authority, if the waters are within a port health district⁶; (2) the local authority, if the waters are within the district of a local authority but not within a port health district⁷; (3) otherwise, such local authority as the Secretary of State⁸ may by order direct or, if no direction is given, the local authority whose district includes that point on land which is nearest to the spot where the vessel is lying⁹. When county councils are responsible under the Public Health Act 1936, a vessel lying in inland or coastal waters but not within a county is subject to the jurisdiction of the council of the county which includes that point on land which is nearest to the spot where the vessel is lying¹⁰.

1 As to the application of the Public Health Act 1936 to vessels see PARA 1 note 34. As to the meaning of 'vessel' see PARA 1 note 33.

2 As to the meaning of 'local authority' see PARA 99.

3 In determining which provisions are provisions for the execution of which county councils are responsible, no account is to be taken of any enactment (whether contained in the Public Health Act 1936 or not) relating to port health authorities or joint boards or to any particular port health authority or joint board or of any instrument made under any such enactment: s 267(6) (added by the Local Government (Miscellaneous Provisions) Act 1982 Sch 6 para 4). As to port health authorities see PARA 102 et seq; and as to joint boards see PARA 101.

4 As to the application of the Public Health (Control of Disease) Act 1984 to vessels see PARA 1 note 34.

5 As to the meanings of 'inland waters' and 'coastal waters' see PARA 1 note 34.

6 See the Public Health Act 1936 s 267(1)(a); and the Public Health (Control of Disease) Act 1984 s 9(1)(a). As to port health districts see PARAS 102-103. Section 9 is repealed by the Health and Social Care Act 2008 Sch 11 para 6, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed.

7 See the Public Health Act 1936 s 267(1)(b); and the Public Health (Control of Disease) Act 1984 s 9(1)(b). See note 6.

8 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 See the Public Health Act 1936 s 267(1)(c); and the Public Health (Control of Disease) Act 1984 s 9(1)(c). See note 6.

10 See the Public Health Act 1936 s 267(2). This provision does not apply if the point on land which is nearest to the spot where the vessel is lying is in Wales: s 267(2A) (added by the Local Government (Wales) Act 1994 Sch 9 para 3).

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105. Protection of members and officers from personal liability.

No matter or thing done, and no contract entered into, by any local authority¹, joint board² or port health authority³, and no matter or thing done by any member or officer of any such authority or other person acting under the direction of such authority, subjects them or any of them personally to any action, liability, claim or demand if the matter or thing was done or the contract was entered into bona fide⁴ for the purpose of executing any public general or local Act⁵. Any expense incurred by an authority, member, officer or other person in so acting must be borne and repaid out of the fund or rate applicable by the authority to the general purposes of the public general or local Act in question⁶. However, this does not exempt any such member from liability to make any payment in pursuance of a court order⁷ requiring repayment to an authority of expenditure declared to be unlawful⁸.

1 As to the meaning of 'local authority' see PARA 99.

2 As to joint boards see PARA 101.

3 As to port health authorities see PARA 102 et seq.

4 As to the effect of this provision see *Bullard v Croydon Hospital Group Management Committee* [1953] 1 QB 511, [1953] 1 All ER 596; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 227.

5 See the Public Health Act 1875 s 265 (amended by the Environment Act 1995 Sch 7 para 15(d)); the Public Health Act 1936 s 305; the Local Government (Miscellaneous Provisions) Act 1976 s 39(1) (amended by the Local Government Finance Act 1982 Sch 6 Pt IV); and the Public Health (Control of Disease) Act 1984 s 69(1). See also the Noise Act 1996 s 12(1). As to the liability of public authorities and officers generally see **ADMINISTRATIVE LAW; LOCAL GOVERNMENT** vol 69 (2009) PARAS 442, 877 et seq. As from a day to be appointed, the Public Health (Control of Disease) Act 1984 s 69 is replaced by a new provision in similar terms but referring to a 'relevant health authority' rather than to 'any local authority, port health authority or joint board': s 69 (prospectively substituted by the Health and Social Care Act 2008 Sch 11 paras 1, 24). At the date at which this volume states the law no such day had been appointed.

6 See note 5.

7 I.e. an order under the Audit Commission Act 1998 s 17 or s 18 (repealed subject to savings): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 772.

8 See the Public Health Act 1875 s 265 (amended by the Audit Commission Act 1998 Sch 3 para 1); the Public Health Act 1936 s 305; the Local Government (Miscellaneous Provisions) Act 1976 s 39(1); and the Public Health (Control of Disease) Act 1984 s 69(2) (amended by the Audit Commission Act 1998 Sch 3 para 7). See also the Noise Act 1996 s 12(2) (amended by the Audit Commission Act 1998 Sch 3 para 31). See note 5.

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106. Finances of joint boards and port health authorities.

Any expenses incurred by a joint board¹, unless otherwise determined by the order constituting the board, are to be defrayed out of a common fund². For the purpose of obtaining payment of sums to be contributed to the fund, the joint board must issue precepts³ to the local authority⁴ of each district concerned⁵.

Subject to the provisions of the order by which it was constituted⁶, a joint board has the like powers of borrowing for the purposes of its functions under the order as a local authority has of borrowing for the purposes of its functions under the Public Health Act 1936⁷. Similarly, a port health authority has the like powers of borrowing for the purposes of its functions under the order by which it was constituted⁸ as a local authority has for the purposes of its functions under the Public Health (Control of Disease) Act 1984⁹.

1 le a joint board constituted under the Public Health Act 1936 s 6 (see PARA 101) or under the Public Health (Control of Disease) Act 1984 s 2 (see PARA 102).

2 See the Public Health Act 1936 s 309(1); and the Public Health (Control of Disease) Act 1984 s 5(2). As from a day to be appointed, s 5(2) is revised so that it refers simply to such expenses being defrayed by the constituent districts in such proportions and in such manner as may be determined by or in accordance with the order: s 5(2) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 4(1), (3)). At the date at which this volume states the law no such day had been appointed.

3 As to precepts see **LOCAL GOVERNMENT** vol 29(1) (2001 Reissue) PARA 514. The precept must state the amount of the contribution and the time limit for paying: see the Public Health Act 1936 s 309(2); and the Public Health (Control of Disease) Act 1984 s 5(3). See note 4.

4 As to the meaning of 'local authority' see PARA 99.

5 See the Public Health Act 1936 s 309(2); and the Public Health (Control of Disease) Act 1984 s 5(3). As from a day to be appointed, s 5(3) is revised so that the reference to 'obtaining payment from constituent districts or rating districts' should no longer include the reference to rating districts: s 5(3) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 4(1), (3), Sch 15 Pt 3). At the date at which this volume states the law no such day had been appointed.

Any sum mentioned in a precept issued by a joint board to a local authority is a debt due from that authority and may be recovered accordingly: see the Public Health Act 1936 s 309(3) (amended by the Statute Law (Repeals) Act 2004); and the Public Health (Control of Disease) Act 1984 s 5(4) (amended by the Statute Law (Repeals) Act 2004).

Where the order constituting a united district (see PARA 101) provides for contributions to be made to the common fund of the joint board by a county council, the amount fixed by the order is a debt due to and recoverable by the joint board: see the Public Health Act 1936 s 309(5). The reference to a county council does not include a reference to the council of a Welsh county or county borough: s 309(6) (added by the Local Government (Wales) Act 1994 Sch 9 para 3(5)).

6 As to the constitution of a joint board see PARA 101.

7 Public Health Act 1936 s 10 (amended by the Public Health (Control of Disease) Act 1984 Sch 3). As to the borrowing powers of local authorities see **LOCAL GOVERNMENT** vol 29(1) (2001 Reissue) PARA 514.

8 As to the constitution of a port health authority see PARA 102.

9 Public Health (Control of Disease) Act 1984 s 5(1).

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107. Establishment expenses.

Where a local authority¹ is empowered under any enactment to carry out any works or to do any other thing on or in relation to any land or building and is entitled to recover from any person expenses incurred by it in exercising that power, the authority may include in, and recover as part of, the expenses such additional sum as appears to it reasonable in respect of its establishment charges².

Where a sum is payable to a relevant authority³ by any person by virtue of the Control of Pollution Act 1974 in respect of the expenses incurred by the authority or by virtue of the above provisions⁴ in respect of establishment charges related to such expenses, then the authority and that person may agree that the sum is to be paid in instalments⁵, and the authority is entitled to receive from that person interest on the sum, or on such portion of it as is for the time being unpaid, at such reasonable rate or rates as the authority may determine⁶.

1 For these purposes, 'local authority' means any local authority within the meaning of the Local Government Act 1972, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Middle Temple, the Council of the Isles of Scilly, a port health authority, Transport for London and a passenger transport executive: see the Local Government Act 1974 ss 35(6), 36(3) (s 35(6) amended by SI 2003/1615). As to Transport for London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 218, 269 et seq. For the purposes of the Local Government Act 1972, 'local authority' means a county council, a district council, a London borough council or a parish council, but, in relation to Wales, means a county council, county borough council or community council: see s 270(1); PARA 99 note 1 head (5); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 23.

2 See the Local Government Act 1974 s 36(1); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 583.

3 'Relevant authority' means, in England, the Secretary of State, a county council, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple and, for the purposes of the Control of Pollution Act 1974 ss 91-93 (see PARAS 132-133), a sewerage undertaker, and any authority established by the Waste Regulation and Disposal (Authorities) Order 1985, SI 1985/1884; and, in Wales, the Secretary of State, a county council or a county borough council and, for the purposes of the Control of Pollution Act 1974 ss 91-93, a sewerage undertaker: Control of Pollution Act 1974 s 98 (amended by the Local Government Act 1985 Sch 17; the Water Act 1989 Sch 25 para 48(11), Sch 27 Pt I; the Local Government (Wales) Act 1994 Sch 9 para 10(4), Sch 18; the Environment Act 1995 Sch 22 para 29(1), (33); and SI 1985/1884). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to sewerage undertakers see PARA 999.

4 See the Local Government Act 1974 s 36: see the text and notes 1-2; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 583.

5 Control of Pollution Act 1974 s 90(2)(a) (amended by the Water Act 1989 Sch 25 para 48(9), Sch 27 Pt I).

6 Control of Pollution Act 1974 s 90(2)(b) (amended by the Local Government, Planning and Land Act 1980 Sch 2 para 17; and the Water Act 1989 Sch 25 para 48(9), Sch 27 Pt I).

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3. GENERAL PROVISIONS

(1) APPLICATION OF THE LEGISLATION TO THE CROWN AND VISITING FORCES

108. Application of the Public Health Act 1936 to the Crown and visiting forces.

Any provisions of the Public Health Act 1936 may be applied to any house¹, building or other premises² belonging to Her Majesty in right of the Crown³ or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or to a government department, or held in trust for Her Majesty for the purposes of a government department, by agreement between the appropriate authority⁴ and the council of the county⁵ or the local authority⁶ of the district within which the property is situated⁷.

A visiting force or headquarters, members of such a force or headquarters, persons employed in the service of such a force, and property used for the purposes of such a force or headquarters, are exempt from the operation of the Public Health Act 1936 to the extent that, by virtue of the rule of law whereby enactments do not bind the Crown, such a force or headquarters, such members, such persons, or such property, would be so exempt if the force or headquarters were a part of any of the home forces⁸.

1 As to the meaning of 'house' see PARA 1 note 34.

2 As to the meaning of 'premises' see PARA 1 note 34.

3 The general principle is that the Crown is not bound by statute unless expressly named: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 384; **STATUTES** vol 44(1) (Reissue) PARA 1321.

4 'Appropriate authority' means: (1) in the case of property belonging to Her Majesty in right of the Crown, the Commissioners of the Crown Lands or other government department having the management of the property in question; (2) in the case of property belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy of Lancaster; (3) in the case of property belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and (4) in the case of property belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, that department: see the Public Health Act 1936 s 341(3)(a)-(d). The Commissioners of the Crown Lands have been replaced by the Crown Estate Commissioners: see the Crown Estate Act 1956 s 1 (repealed); the Crown Estate Act 1961 s 1; and **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 279-280. If any question arises as to what authority is the appropriate authority in relation to any property, that question must be referred to the Treasury, whose decision is final: Public Health Act 1936 s 341(3). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

5 'County' means administrative county: Public Health Act 1936 s 343(1).

6 As to the meaning of 'local authority' see PARA 99.

7 See the Public Health Act 1936 s 341(1), (2).

8 Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12(1), Sch 5. As to visiting forces etc see **ARMED FORCES** vol 2(2) (Reissue) PARA 135 et seq.

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109. Application of the Control of Pollution Act 1974 to Crown land.

In so far as any interest in Crown land¹ is not an interest belonging to Her Majesty, a Crown interest or a duchy interest, the Control of Pollution Act 1974² applies to the land as if it were not Crown land³.

1 'Crown land' means land in which there is a Crown interest or duchy interest: see the Control of Pollution Act 1974 s 105(3); and the Town and Country Planning Act 1990 s 293(1). 'Crown interest' means an interest belonging to Her Majesty in right of the Crown or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department (see the Control of Pollution Act 1974 s 105(3)); or it means an interest belonging to Her Majesty in right of the Crown or in right of her private estates, an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department and such other interest as the Secretary of State specifies by order (see the Town and Country Planning Act 1990 s 293(1) (definition prospectively substituted by the Planning and Compulsory Purchase Act 2004 Sch 3 para 6(1), (2))). 'Duchy interest' means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall: see the Control of Pollution Act 1974 s 105(3); and the Town and Country Planning Act 1990 s 293(1).

2 See PARAS 131 et seq, 620, 724-725, 819 et seq.

3 Control of Pollution Act 1974 s 105(3).

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110. Application of the Public Health (Control of Disease) Act 1984 to the Crown.

In relation to certain property¹, the appropriate authority² may agree with the council of the county, or the local authority³ of the district⁴, in which the property is situated that any relevant provision of the Public Health (Control of Disease) Act 1984 specified in the agreement applies to the property; and, while the agreement is in force, that provision applies to that property accordingly, subject to the terms of the agreement⁵. This provision applies to any house⁶, building or other premises⁷ being property belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for purposes of a government department⁸.

1 See the text and notes 6-8.

2 'Appropriate authority' means: (1) in the case of property belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the property; (2) in the case of property belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy of Lancaster; (3) in the case of property belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and (4) in the case of property belonging to a government department or held in trust for Her Majesty for purposes of a government department, that department: Public Health (Control of Disease) Act 1984 s 73(4). If any question arises as to what authority is the appropriate authority in relation to any property, that question must be referred to the Treasury, whose decision is final: s 73(4). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq. As to the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 280.

3 As to the meaning of 'local authority' see PARA 99.

4 As to the meaning of 'district' see PARA 885 note 6.

5 Public Health (Control of Disease) Act 1984 s 73(2). Any such agreement may contain such consequential and incidental provisions (including, with the approval of the Treasury, provisions of a financial character) as appear to the appropriate authority to be necessary or equitable: s 73(3).

6 As to the meaning of 'house' see PARA 1 note 34.

7 As to the meaning of 'premises' see PARA 1 note 34. As from a day to be appointed, a further provision is added to the Public Health (Control of Disease) Act 1984 providing that in s 73 'premises' does not include any vessel belonging to Her Majesty, or under the command or charge of an officer holding Her Majesty's commission: s 73(5) (prospectively added by the Health and Social Care Act 2008 Sch 11, paras 1, 28). At the date at which this volume states the law no such day had been appointed.

8 Public Health (Control of Disease) Act 1984 s 73(1).

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111. Application of the Environmental Protection Act 1990 to the Crown.

The provisions of the Environmental Protection Act 1990 and of regulations and orders¹ made under it bind the Crown². No contravention by the Crown of any provision of the Act or of any regulations or order made under it makes the Crown criminally liable, but the High Court may, on the application of any public or local authority charged with enforcing that provision³, declare unlawful any act or omission of the Crown which constitutes such a contravention⁴. Notwithstanding these provisions, the Environmental Protection Act 1990 and regulations and orders made under it apply to persons in the public service of the Crown as they apply to other persons⁵.

If the Secretary of State⁶ certifies that it appears to him, as respects any Crown premises⁷ and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers ought not to be exercisable in relation to the premises, those powers are not exercisable in relation to those premises⁸.

1 For these purposes, references to regulations or orders are references to regulations or orders made by statutory instrument: Environmental Protection Act 1990 s 159(6).

2 Environmental Protection Act 1990 s 159(1). Nothing in 159 is to be taken as in any way affecting Her Majesty in her private capacity: s 159(5). Any reference in the Environmental Protection Act 1990 to Her Majesty in her private capacity is to be construed as including a reference to Her Majesty in right of the Duchy of Lancaster and to the Duke of Cornwall: see s 159(5); and the Crown Proceedings Act 1947 s 38(3).

3 For the purposes of the Environmental Protection Act 1990 s 159 in its application to Pt II (ss 29-78) and Pt IV (ss 86-99), the authority charged with enforcing the provisions of those Parts in its area is, in the case of Pt II, any waste regulation authority (see PARA 620 note 6) and, in the case of Pt IV, any principal litter authority (see PARA 722 note 2): s 159(7).

4 Environmental Protection Act 1990 s 159(2).

5 Environmental Protection Act 1990 s 159(3).

6 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

7 For these purposes, 'Crown premises' means premises held or used by or on behalf of the Crown: Environmental Protection Act 1990 s 159(4).

8 Environmental Protection Act 1990 s 159(4).

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112. Application of the Environment Act 1995 to the Crown.

The provisions of the Environment Act 1995 bind the Crown¹. No contravention by the Crown of any provision made by or under that Act makes the Crown criminally liable, but the High Court may, on the application of the Environment Agency², declare unlawful any act or omission of the Crown which constitutes such a contravention³. Notwithstanding these provisions, any provision made by or under the Environment Act 1995 applies to persons in the public service of the Crown as it applies to other persons⁴.

If the Secretary of State⁵ certifies that it appears to him, as respects any Crown premises⁶ and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers ought not to be exercisable in relation to those premises, those powers are not exercisable in relation to those premises⁷.

1 Environment Act 1995 s 115(1). The provisions of Pt III (ss 61-79) (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq) and any amendments, repeals and revocations made by other provisions of the Environment Act 1995 (other than those made by the provisions of s 116, Sch 21, which bind the Crown) bind the Crown to the extent that the enactments to which they relate bind the Crown: s 115(2). Nothing in s 115 may be taken as in any way affecting Her Majesty in her private capacity: s 115(6). Any reference in the Environment Act 1995 to Her Majesty in her private capacity is to be construed as including a reference to Her Majesty in right of the Duchy of Lancaster and to the Duke of Cornwall: see s 115(6); and the Crown Proceedings Act 1947 s 38(3).

2 As to the Environment Agency see PARA 68 et seq.

3 Environment Act 1995 s 115(3).

4 Environment Act 1995 s 115(4).

5 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

6 For these purposes, 'Crown premises' means premises held or used by or on behalf of the Crown: Environment Act 1995 s 115(5).

7 Environment Act 1995 s 115(5).

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(2) GENERAL PROVISIONS OF THE

113. Application of the general provisions of the Public Health Act 1936.

To provide a framework of general powers to supplement the specific functions contained in the Public Health Act 1936, the Act provides for various administrative and legal powers¹. Certain of those powers have been repealed, replaced or amended in consequence of the reorganisation of local government and through the coming into force of the Environmental Protection Act 1990, but many of the general provisions of the Public Health Act 1936 remain in force. The general provisions apply not only to the rest of the Act but also apply in full or in part² to various other enactments³.

1 See the Public Health Act 1936 Pt XII (ss 275-347); and PARA 114 et seq.

2 In certain cases, the provisions of the Public Health Act 1936 Pt XII are applied as a whole; and, in others, specific provisions only are applied. In some instances the application extends only to part of the applying Act.

3 See eg the Prevention of Damage by Pests Act 1949 s 10 (see PARA 872), applying to Pt I (ss 1-12) (see PARAS 864, 872 et seq) the provisions of the Public Health Act 1936 ss 284-286 (s 286 repealed); the Public Health Act 1961 s 1(4), applying the Public Health Act 1936 ss 275, 283, 284, 285, 288, 304, 305, 341, 343 in relation to the Public Health Act 1961 Pt IV (ss 45-54) and Pt VI (ss 73-81) as if those Parts were contained in the Public Health Act 1936; the Public Health Act 1961 s 1(1) (amended by the Health and Safety at Work etc Act 1974 s 76(2)), which provides that the Public Health Act 1961 Pt II (ss 17-37) is to be construed as one with the Public Health Act 1936 Pt II (ss 33-90); the Control of Pollution Act 1974 s 70(2) (see PARA 821), under which the Secretary of State may make regulations as to appeals under Pt III (ss 57-74) (see PARA 819 et seq), whether to the Secretary of State or to a magistrates' court, and the regulations may include provisions comparable to those in the Public Health Act 1936 s 290 (see PARA 125 et seq); and the Clean Air Act 1993 s 62 (amended by the Statute Law (Repeals) Act 1993), under which the Public Health Act 1936 ss 275, 276, 278, 283, 284, 285, 289, 291, 293, 294 have effect in relation to the provisions of the Clean Air Act 1993 (apart from Pt IV (ss 30-33) and Pt V (ss 34-40)) as if those provisions were provisions of the Public Health Act 1936.

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114. Entry of premises.

Any authorised officer¹ of a council has a right² to enter any premises³ at all reasonable hours:

- 51 (1) for the purpose of ascertaining whether there is or has been, on or in connection with the premises, any contravention of the provisions of the Public Health Act 1936 or of any byelaws or building regulations made under it, being provisions which it is the council's duty to enforce⁴;
- 52 (2) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the council to take any action, or execute any work, under the Act or any such byelaws or building regulations⁵;
- 53 (3) for the purpose of taking any action, or executing any work, authorised or required by the Act or any such byelaws or building regulations, or any order made under the Act, to be taken or executed by the council⁶; and
- 54 (4) generally for the purpose of the performance by the council of its functions under the Act or any such byelaws or building regulations⁷.

The officer thus has power to enter premises adjoining those on which work is to be done⁸.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing that admission to any premises has been refused, or refusal is apprehended, or the premises are unoccupied or the occupier is temporarily absent, or the case is one of urgency, or an application for admission would defeat the object of the entry⁹, and there is, in each case, reasonable ground for entry into the premises¹⁰, he may grant a warrant authorising the council by any authorised officer to enter the premises, if need be by force¹¹.

If any person who in compliance with these provisions is admitted into a factory or workplace discloses to any person any information which he obtained there with regard to any manufacturing process or trade secret he is, unless the disclosure was made in the performance of his duty, liable to a penalty¹².

Local authorities have powers to enter and survey land in connection with a proposal to acquire land or rights over it compulsorily¹³.

1 'Authorised officer' means, as respects any council, an officer of the council authorised by it in writing, either generally or specially, to act in matters of any specified kind, or in any specified matter: Public Health Act 1936 s 343(1). As to the appointment of local authority staff and proper officers see the Local Government Act 1972 s 112, s 270(3); and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 425, 431.

2 le on producing, if so required, some duly authenticated document showing his authority: Public Health Act 1936 s 287(1).

3 As to the meaning of 'premises' see PARA 1 note 34. Admission to premises not being a factory or workplace may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier: Public Health Act 1936 s 287(1) proviso (amended by the Statute Law (Repeals) Act 1993). A letter expressing an intention to proceed under the Public Health Act 1936 s 290(6) (see PARA 127) is not such notice in relation to an entry three and a half months later: *Stroud v Bradbury* [1952] 2 All ER 76, DC. The authorised officer may take with him such other persons as may be necessary: Public Health Act 1936 s 287(3). 'Factory' means a factory within the meaning of the Factories Act 1961 (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 318): Public Health Act 1936 s 343(1) (definition amended by the Statute Law (Repeals) Act 1993). 'Workplace' does not include a factory, but save as aforesaid includes any place in which persons are employed

otherwise than in domestic service: Public Health Act 1936 s 343(1) (definition amended by the Statute Law (Repeals) Act 1993).

4 Public Health Act 1936 s 287(1)(a) (amended by the Public Health Act 1961 Sch 1 Pt III). As to building regulations see **BUILDING**. The power applies also to byelaws as to hairdressers and barbers under the Public Health Act 1961 s 77 (see s 77(2); and PARA 979), and to the powers to remove obstructions from private sewers in the Local Government (Miscellaneous Provisions) Act 1976 s 35 (see s 35(7); and PARAS 1076-1077). An authorised officer leaving any unoccupied premises which he has entered by virtue of a warrant must leave them as effectually secured against trespassers as he found them: Public Health Act 1936 s 287(3).

Under the similar provisions of the Public Health Act 1875 s 102 (repealed), it was held that this did not authorise an authority to enter private premises without first requesting permission of the occupier: *Consett UDC v Crawford* [1903] 2 KB 183, DC.

The Public Health Act 1936 s 287 has effect in relation to the Clean Air Act 1993 by virtue of s 56(1) with certain modifications (see PARA 244).

5 Public Health Act 1936 s 287(1)(b) (amended by the Public Health Act 1961 Sch 1 Pt III). See also note 4. Although head (1) in the text might confine the right of entry to premises on which a nuisance is alleged to exist, head (2) in the text is in much wider terms and gives a right of entry to any premises: *Senior v Twelves* (1958) 56 LGR 239, DC.

6 Public Health Act 1936 s 287(1)(c) (amended by the Public Health Act 1961 Sch 1 Pt III). See also note 4.

7 Public Health Act 1936 s 287(1)(d) (amended by the Public Health Act 1961 Sch 1 Pt III). See also note 4.

8 *Senior v Twelves* (1958) 56 LGR 239, DC. See also note 5.

9 Public Health Act 1936 s 287(2)(a).

10 Public Health Act 1936 s 287(2)(b). The mere fact that a power to enter and inspect premises exists is not a reasonable ground for entry: *Vines v Governors of North London Collegiate and Camden Schools for Girls* (1899) 63 JP 244, DC. Where entry is sought to ascertain whether a nuisance exists, the justice does not decide the existence of the nuisance, but whether there is reasonable ground for suspecting it; and he may receive evidence as to the facts: *Wimbledon UDC v Hastings* (1902) 87 LT 118, DC.

11 Public Health Act 1936 s 287(2). A warrant must not be issued unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry: s 287(2) proviso. The warrant continues in force until the purpose for which the entry is necessary has been satisfied: s 287(4).

12 Public Health Act 1936 s 287(5) (amended by the Statute Law (Repeals) Act 1993). The penalty is a fine not exceeding level 3 on the standard scale or a term of imprisonment not exceeding three months: Public Health Act 1936 s 287(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the prosecution of offences see PARA 128.

13 See **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501 et seq. As to compulsory acquisition of land by local authorities see also **LOCAL GOVERNMENT** vol 69 (2009) PARA 510 et seq.

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115. Penalty for obstruction.

A person who wilfully obstructs any person acting in the execution of the Public Health Act 1936¹, or of any byelaw, building regulation, order or warrant made or issued under the Act, in any case for which no other provision is made by the Act, is liable to a penalty².

1 Persons who purport to exercise a right of entry but who enter in a manner not authorised by the statute are not acting in execution of it: *Consett UDC v Crawford* [1903] 2 KB 183, DC. As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

2 Public Health Act 1936 s 288 (amended by the Public Health Act 1961 Sch 1 Pt III). The penalty is a fine not exceeding level 1 on the standard scale: Public Health Act 1936 s 288 (amended by virtue of the Criminal Justice Act 1982 ss 35, 37, 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the prosecution of offences see PARA 128.

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116. Meaning of 'owner'.

Unless the context otherwise requires, 'owner', for the purposes of the Public Health Act 1936¹, means the person for the time being receiving the rackrent² of the premises³ in connection with which the word is used, whether on his own account or as agent or trustee for any other person⁴, or who would so receive it if those premises were let at a rackrent⁵. If the premises are so dedicated to public purposes that by virtue of the common law or statute they cannot be let at a rackrent there is no owner⁶; but the premises must be incapacitated for ever from earning a rackrent, and the fact that a person is disabled from letting them merely by agreement, covenant, deed or trust does not prevent him from being the owner⁷. A person who lets at less than the rackrent is not the owner, but his lessee may be⁸.

1 As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

2 'Rackrent', in relation to any property, means a rent which is not less than two-thirds of the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and deducting from it the probable average annual cost of repairs, insurance and other expenses, if any, necessary to maintain the property in a state to command such rent: Public Health Act 1936 s 343(1) (definition amended by the Statute Law (Repeals) Act 1993). The rackrent is determined as at the date of the lease, if there is one: *Borthwick-Norton v Collier* [1950] 2 KB 594, [1950] 2 All ER 204, CA; *London Corpn v Cusack-Smith* [1955] AC 337, [1955] 1 All ER 302, HL. In determining the rackrent, regard must be paid to any restrictive covenants in the lease: *Borthwick-Norton v Collier* above. A lease is some evidence of the rackrent, and of ownership: *Wareham and Dale Ltd v Fyffe* (1910) 74 JP 249, DC.

3 As to the meaning of 'premises' see PARA 1 note 34. A person receiving the rackrent of a house which he has let as a whole is not the owner of premises comprising a part of it which has been sublet (*Field & Sons v Southwark London Borough Council* (1907) 96 LT 646), but he is the owner of the whole house, and a mesne tenant who receives rent from sub-tenants of several parts of the house is not, although the total rent so received is more than the rackrent of the whole (*Kensington Borough Council v Allen* [1926] 1 KB 576, DC).

4 See eg *St Helen's Corpn v Kirkham* (1885) 16 QBD 403 (agent); *Re Barney, Harrison v Barney* [1894] 3 Ch D 562 (trustee); *Re Lever, Cordwell v Lever* [1897] 1 Ch 32 (on appeal 76 LT 71, CA) (trustee); *Broadbent v Shepherd* (1900) 83 LT 504, DC (agent); *Watts v Battersea Corpn* [1929] 2 KB 63, CA (solicitor). See also the cases cited in note 7. An agent has been treated as owner even after he resigned the agency: *Broadbent v Shepherd* [1901] 2 KB 274, DC. A receiver appointed by the court is not an owner within the provision (*Bacup Corpn v Smith* (1890) 44 ChD 395; *Hackett v Smith* [1917] 2 IR 508); nor is a secretary who merely receives cheques and pays them into the landlord's bank account (*Bottomley v Harrison* [1952] 1 All ER 368, DC). The principal is owner as well as his agent who receives the rackrent (*Lyon v Greenhow* (1892) 8 TLR 457); but see note 5. Payment of rent by the tenant with the owner's bank account does not normally constitute the owner's bank the owner's agent: *Midland Bank Ltd v Conway Borough Council* [1965] 2 All ER 972, [1965] 1 WLR 1165, DC.

5 Public Health Act 1936 s 343(1). A person who receives the rackrent de facto, in place of another who is entitled, is the owner: *Peek v Waterloo and Seaforth Local Board of Health* (1863) 2 H & C 709. It seems that there may be more than one owner in relation to the same premises: see *London Corpn v Cusack-Smith* [1955] AC 337 at 353, [1955] 1 All ER 302 at 309-310, HL, per Lord Porter, at 358-359 and 313 per Lord Reid, and at 348 and 306 per Lord Oaksey (dissenting). See also *Lyon v Greenhow* (1892) 8 TLR 457; and contrast *Walford v Hackney Board of Works* (1894) 43 WR 110, DC. A mortgagee in possession is an owner (*Tottenham Local Board v Williamson* (1893) 62 LJQB 322; *Maguire v Leigh-on-Sea UDC* (1906) 70 JP 479; and see *Blackburn Corpn v Micklethwait* (1886) 54 LT 539), as is a lessee under a building lease at a ground rent or peppercorn rent (*Poplar Board of Works v Love* (1874) 29 LT 915; *St Helen's Corpn v Riley* (1883) 47 JP 471), but a builder under a building agreement who as yet has no interest in the land is not (*Lady Holland v Kensington Vestry* (1867) LR 2 CP 565; *Driscoll v Battersea London Borough Council* [1903] 1 KB 881, DC). See also *Plumstead District Board of Works v Ecclesiastical Comrs for England* [1891] 2 QB 361, DC (land no longer vested in commissioner); and see

the cases cited in notes 3-4, 6-8. It was held in *Walford v Hackney Board of Works* above that a mesne tenant who receives the rackrent from a sub-tenant and pays the same rent over to the landlord is not an owner (sed quaere). A person remains an owner after notice to treat for compulsory purchase has been served on him: *Barnet v Metropolitan Board of Works* (1882) 46 LT 384, DC. The vendor, as the person entitled to grant a lease and to receive the rent in the first place, remains owner until completion of the conveyance where there is a purchase by instalment payments under which the purchaser is entitled (as between vendor and purchaser) to the rents and profits in advance of such completion: *Ebor Land and Development Co Ltd v Benefield* (1969) 68 LGR 237, DC. See also *Courtney-Southan v Crawley UDC* [1967] 2 QB 930, [1967] 2 All ER 246, DC, where it was held that the husband of the fee simple owner was not the owner although allowed to control their joint business, as it could not be inferred that the fee simple owner would have appointed him as her rent collector if she had let the land.

6 *Angell v Paddington Vestry* (1868) LR 3 QB 714 (church); *Plumstead Board of Works v British Land Co* (1875) LR 10 QB 203, Ex Ch (highway); *Great Eastern Rly Co v Hackney Board of Works* (1883) 8 App Cas 687 at 693, HL, per Lord Watson, and at 701-702 per Lord Fitzgerald; *Wright v Ingle* (1885) 16 QBD 379 at 402, CA, per Bowen LJ, and at 392-394 per Esher MR: *River Thames Conservators v Port of London Port Sanitary Authority* [1894] 1 QB 647, DC (river bed); *London County Council v Wandsworth London Borough Council* [1903] 1 KB 797, CA (common); *Macey v James* (1917) 86 LJB 1257, DC (highway). Contrast the cases cited in note 7; and see *Williams v Wandsworth Board of Works* (1884) 13 QBD 211, DC; *St Giles, Camberwell, Vestry v London Cemetery Co* [1894] 1 QB 699, DC; *Hackney Corpn v Lee Conservancy Board* [1904] 2 KB 541, CA (premises or land lettable in each case); *R v Lee* (1878) 4 QBD 75 (incumbent of church). See, however, *Folkestone Corpn v Woodward* (1872) LR 15 Eq 159 (perpetual curate 'owner' of church); *Re Christchurch Inclosure Act, Meyrick v A-G* [1894] 3 Ch 209 (inclosed common; statutory incapacity); *Hampstead Corpn v Midland Rly Co* [1905] 1 KB 538, CA (statutory incapacity). These last two cases, however, may be distinguished on the ground that the land was not dedicated to the public. See also note 7.

A person is not liable as owner of land owned and occupied for the purposes of the Crown: *Hornsey UDC v Hennell* [1902] 2 KB 73, DC. See further PARA 108. As to the extension of the doctrine to visiting forces see PARA 108.

7 *Bowditch v Wakefield Local Board* (1871) LR 6 QB 567 (school trustees); *Pound v Plumstead Board of Works* (1871) LR 7 QB 183 (private roads); *Caiger v St Mary, Islington, Vestry* (1881) 50 LJMC 59, DC (chapel trustees); *Williams v Wandsworth Board of Works* (1884) 13 QBD 211, DC (four inch strip of land; covenant to erect fence); *Wright v Ingle* (1885) 16 QBD 379, CA (chapel trustees); *Hornsey Local Board v Brewis* (1890) 60 LJMC 48, DC (chapel trustees); *St Mary, Islington, Vestry v Cobbett* [1895] 1 QB 369, DC (covenant; public garden); *Hornsey District Council v Smith* [1897] 1 Ch 843, CA (school trustees); *Herne Bay UDC v Payne and Wood* [1907] 2 KB 130, DC (covenant; public pleasure grounds). The principle has been applied even where the agreement or trust is embodied in a statute: *Re Christchurch Inclosure Act, Meyrick v A-G* [1894] 3 Ch 209; *Hampstead Corpn v Midland Rly Co* [1905] 1 KB 538, CA (strip of land to be fenced etc).

8 *Truman, Hanbury, Buxton & Co v Kerslake* [1894] 2 QB 774, DC; *Nalder v Ilford Corpn* [1951] 1 KB 822, [1950] 2 All ER 903; *London Corpn v Cusack-Smith* [1955] AC 337, [1955] 1 All ER 302, HL. See also *Poplar Board of Works v Love* (1874) 29 LT 915; *St Helen's Corpn v Riley* (1883) 47 JP 471.

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117. Execution of work on behalf of owners or occupiers.

A local authority¹ may, by agreement with the owner² or occupier of any premises³, itself execute at his expense any work which it has required him to execute under the Public Health Act 1936⁴, or any work in connection with the construction, laying, alteration or repair of a sewer⁵ or drain⁶ which he is entitled to execute, and for that purpose the authority has all such rights as he would have⁷.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'owner' see PARA 116.

3 As to the meaning of 'premises' see PARA 1 note 34.

4 As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

5 As to the meaning of 'sewer' see PARA 998.

6 As to the meaning of 'drain' see PARA 998.

7 Public Health Act 1936 s 275 (amended by the Water Act 1945 Sch 4).

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118. Sale of materials.

A local authority¹ may sell any materials which it has removed from any premises², including any street³, when executing works under, or otherwise carrying into effect the provisions of, the Public Health Act 1936⁴, and which are not before the expiration of three days from the date of their removal claimed by the owner and taken away by him⁵. The proceeds of sale must be paid to the person to whom the materials belonged after deducting any expenses recoverable from him⁶.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'premises' see PARA 1 note 34.

3 'Street' includes any highway, including a highway over a bridge, and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not: Public Health Act 1936 s 343(1).

4 As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

5 Public Health Act 1936 s 276(1). Section 276 does not apply to refuse removed by a local authority: s 276(3). See *Goodacre v Wealdon District Council* [2003] EWHC 3432 (QB), [2003] All ER (D) 320 (Dec) (authority owes owner a duty of care to look after removed goods of value properly).

6 Public Health Act 1936 s 276(2).

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119. Authentication of documents.

All notices, orders, consents, demands and other documents authorised or required by or under the Public Health Act 1936¹ to be given, made or issued by a council, and all notices and applications authorised or required by or under the Act to be given or made to, or to any officer of, a council must be in writing². Any such document which is given, made or issued by a council may be signed on its behalf by the proper officer of the council appointed for that purpose³.

¹ As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

² Public Health Act 1936 s 283(1). The requirement under s 283(1) is mandatory and not directory: *Epping Forest District Council v Essex Rendering Ltd* [1983] 1 All ER 359, [1983] 1 WLR 158, HL. 'Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form: Interpretation Act 1978 s 5, Sch 1. The Secretary of State may by regulations prescribe the form of any notice, advertisement, certificate or other document to be used for any of the purposes of the Public Health Act 1936 and, if forms are so prescribed, those forms or forms to the like effect may be used in all cases to which those forms are applicable: s 283(2). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

³ See the Public Health Act 1936 s 284(1); and the Local Government Act 1972 s 234(1). As to the meaning of 'proper officer' see **LOCAL GOVERNMENT** vol 69 (2009) PARA 431.

Any document purporting to bear the signature of the proper officer of the authority is deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the local authority: see the Public Health Act 1936 s 284(2); and the Local Government Act 1972 s 234(2). 'Signature' includes a facsimile of a signature by whatever process reproduced: see the Public Health Act 1936 s 284(2); and the Local Government Act 1972 s 234(2). See *Albon v Railtrack plc* [1998] EHLR 83, DC (notice signed on behalf of Assistant Chief Environmental Health Officer was valid). For decisions under previous legislation as to the requirements for signature see *Tennant v LCC* (1957) 121 JP 428, CA, where a prescribed form provided for the landlord's signature but it was held that the signature of his authorised agent was good, thus following the common law rule that a signature by an authorised agent is a good signature by the principal. See also *R v Kent Justices* (1873) LR 8 QB 305 at 307 per Blackburn J; *France v Dutton* [1891] 2 QB 208 (signature by a clerk to an officer suffices); *LCC v Vitamins Ltd* [1955] 2 QB 218, [1955] 2 All ER 229, CA (authorised official may sign by agent without the agent indicating that he is an agent, the personal signature of the authorised officer not being required); *R v Gateshead Justices, ex p Tesco Stores Ltd* [1981] QB 470 at 479, [1981] 1 All ER 1027 at 1034, DC, per Donaldson LJ (authorisation of others to apply facsimile signature).

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120. Service of documents.

In any case for which no other provision is made¹, any notice, order, consent, demand or other document² required or authorised to be given to or served on any person³ under the Public Health Act 1936⁴ may be given or served:

- 55 (1) by delivering it to that person⁵; or
- 56 (2) by leaving it or sending it in a prepaid letter⁶ addressed to him⁷ at his usual or last known residence⁸; or
- 57 (3) in the case of an incorporated company or body (other than a local authority⁹), by delivering it to its secretary or clerk at its registered or principal office or by sending it in a prepaid letter addressed to him at that office¹⁰; or
- 58 (4) if he is served as being the owner¹¹ of premises¹² by virtue of the fact that he receives or would receive¹³ the rackrent as agent for another, by leaving it or sending it in a prepaid letter addressed to him at his place of business¹⁴; or
- 59 (5) in the case of a document to be given to or served on the owner or occupier of any premises, if it is not practicable after reasonable inquiry to ascertain the name and address of that person, or if the premises are unoccupied, by addressing it to the person concerned by the description of 'owner' or 'occupier' of the premises, naming them, and delivering it to some person on the premises or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises¹⁵.

1 le by the Public Health Act 1936.

The Local Government Act 1972 s 233 provides an additional code of provisions for the service of notices by local authorities. The provisions of the local government code are substantially the same as those under the Public Health Act 1936, except that: (1) the provisions of the Local Government Act 1972 s 233 do not apply to notice in court proceedings (see s 233(9)); (2) those provisions do not permit service on owners of premises by service on an agent receiving the rackrent; and (3) special provision is made for partnership addresses (see s 233(3)), and for specified addresses for service (see s 233(4)). See further **LOCAL GOVERNMENT** vol 69 (2009) PARA 576. The local government code applies to documents required to be served by or on behalf of the chairman of a parish meeting: see s 233(8). As to the service of notices on local authorities and their officers see the Local Government Act 1972 s 231; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 576.

The Control of Pollution Act 1974 s 95 makes provision for the service of notice on or by water undertakers and sewerage undertakers under that Act, the provisions being substantially the same as those in the Local Government Act 1972 s 233: see PARA 133 note 6. As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq; and as to sewerage undertakers see PARA 999.

2 This provision has been held not to include a summons: see *R v Wilson, ex p Battersea London Borough Council* [1948] 1 KB 43, [1947] 2 All ER 569, DC.

3 'Person' includes a body of persons, corporate or unincorporate: Interpretation Act 1978 s 5, Sch 1.

4 As to the other Acts to which the Public Health Act 1936 s 285 applies see PARA 113.

5 Public Health Act 1936 s 285(a).

6 Public Health Act 1936 s 285(b). Unless the contrary is proved, service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of post: see the Interpretation Act 1978 s 7; and **STATUTES** vol 44(1) (Reissue) PARA 1388. An affidavit of service must state that the letter was prepaid: *Walthamstow UDC v Henwood* [1897] 1 Ch 41.

7 If the address is on the outside, its omission in the body of the document seems to be immaterial: see *Linforth v Butler* [1899] 1 QB 116, DC.

8 Public Health Act 1936 s 285(c). The meaning of 'residence' in a statute depends upon the purpose of the enactment: *Blackwell v England* (1857) 8 E & B 541; *Kidderminster Case*, *Powell v Guest* (1864) 18 CBNS 72. Under the Public Health Acts (see PARA 2 note 1), business premises may be a residence: *Mason v Bibby* (1964) 2 H & C 881, DC; *Newport Corp v Lang* (1892) 57 JP 199, DC. Service there under those Acts is good although it would not be good service at a place of abode under what is now the Magistrates' Courts Rules 1981, SI 1981/552, r 99(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 914; **MAGISTRATES** vol 29(2) (Reissue) PARA 690): *R v Braithwaite* [1918] 2 KB 319, CA; *R v Hastings Justices, ex p Mitchell* (1925) 89 JP Jo 86, DC; and see *Morecambe and Heysham Corp v Warwick* (1958) 56 LGR 283, DC, where a place of business was held to be a place of abode. It seems that an individual may have more than one residence: *Walcot v Botfield* (1854) Kay 534; *R v Exeter Corp, Wescomb's Case* (1868) LR 4 QB 110.

9 As to service on local authorities see the Local Government Act 1972 s 231; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 578. As to the meaning of 'local authority' see PARA 99.

10 Public Health Act 1936 s 285(d). A mere misnomer is not necessarily fatal to the validity of a notice; as a general principle, the question is what a reasonable man reading it would understand it to mean: *Malkins Bank Estates Ltd v Kirkham* (1966) 64 LGR 361 at 366, DC, per Lord Parker of Waddington CJ, adopting the dictum of Devlin LJ in *Davies v Elsby Bros Ltd* [1960] 3 All ER 672 at 676, [1961] 1 WLR 170 at 176, CA.

11 As to the meaning of 'owner' see PARA 116.

12 As to the meaning of 'premises' see PARA 1 note 34.

13 Ie if the premises were let at a rackrent. As to the meaning of 'rackrent' see PARA 116 note 2.

14 Public Health Act 1936 s 285(e).

15 Public Health Act 1936 s 285(f). To prove good service in this case it is necessary to adduce evidence of reasonable inquiry: *R v Mead* [1898] 1 QB 110, DC.

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121. Compensation for damage.

A local authority¹ must make full compensation to any person² who has sustained damage by reason of the exercise by the authority³ of any of its powers under the Public Health Act 1936⁴ in relation to a matter as to which he has not himself been in default⁵. However, no person may claim compensation by virtue of these provisions on the ground that he has sustained damage by reason of any action of a local authority in respect of which the local authority is authorised, by the Public Health Act 1936, to pay compensation if it thinks fit⁶.

Any dispute as to the fact of damage, or as to the amount of compensation, must be determined by arbitration⁷, but if the claim does not exceed a certain amount⁸ all questions as to the fact of damage, liability to pay compensation and the amount of compensation may, on the application of either party, be determined by, and any compensation awarded may be recovered before, a magistrates' court⁹. Proceedings may not be brought in respect of matters authorised by the Public Health Act 1936 for which compensation may be awarded¹⁰.

The damage¹¹ in respect of which compensation is payable under the Public Health Act 1936 must be such as would have been actionable but for the authority of that Act¹². It must arise from the execution of the works, and not merely from their use after construction¹³, and must arise from the execution of the powers under that Act and not under other statutory or common law powers¹⁴. In addition to the rights to compensation under the Public Health Act 1936 there are rights to compensation where the value of an interest in land is depreciated by physical factors caused by the use of public works in the exercise of statutory powers¹⁵. Furthermore, the damage must be the result of a lawful exercise of the statutory powers; when it arises from something done by the local authority which it is not authorised to do, the remedy is by legal proceedings and not by a claim for compensation¹⁶. The damage sustained need not be damage to land or an interest in land, but it includes other species of damage¹⁷; it may include damage for a temporary obstruction of access¹⁸ and generally includes prospective or future, as well as present, damage¹⁹.

1 As to the meaning of 'local authority' see PARA 99. For the purpose of the Public Health Act 1936 s 278, 'local authority' also includes a county council: Local Government Act 1972 s 180(4), Sch 14 para 20 (amended by the Local Government Act 1985 Sch 17).

2 That person must have been entitled to the property affected at the time of the execution of the works (*Helmore v East Ham Local Board* (1893) Times, 13 December; affd (1894) Times, 8 February, CA), or have the right to claim compensation duly assigned to him (*Dawson v Great Northern and City Rly Co* [1905] 1 KB 260, CA). However, these cases were decided before the Law of Property Act 1925 s 62 (see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 236), and it seems that, in so far as a compensation clause arises in respect of an interest in land, a conveyance of the legal estate will include the right to compensation.

3 It is uncertain how far an authority is liable for the acts of its officers upon whom powers are directly conferred by statute etc: see *Ormerod v Rochdale Corpn* (1898) 62 JP 153 (authority liable); *Stanbury v Exeter Corpn* [1905] 2 KB 838, DC (authority not liable). Both these cases concerned acts not in lawful exercise of powers. See further **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 182 et seq.

4 As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

5 Public Health Act 1936 s 278(1). A person may be in default even though he is unaware of the fact by which he is in default and could not reasonably be expected to discover it: *Hobbs v Winchester Corpn* [1910] 2 KB 471, CA (butcher's unsound meat). Where under a local Act an authority executed work in default of a

person, then, although the Act made that person liable for damage consequent on doing such work, the authority was held liable to compensate him in so far as damage was caused by work in excess of the requirement: *Place v Rawtenstall Corpn* (1916) 86 LJKB 90, CA. See also PARA 898.

6 Public Health Act 1936 s 278(3) (amended by the Water Consolidation (Consequential Provisions) Act 1991 Sch 3 Pt I). As to compensation in respect of sewerage works etc see PARA 1030.

7 Public Health Act 1936 s 278(2). This provision is applied in relation to the provision of bus shelters by the Local Government (Miscellaneous Provisions) Act 1953 s 6(3): see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 563. In an arbitration under the Public Health Act 1936, the reference is, except where otherwise expressly provided, to a single arbitrator appointed by agreement or, in default of agreement, by the Secretary of State: s 303. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. The arbitration is governed in general by the Arbitration Act 1996 Pt I (ss 1-84): see s 94; and **ARBITRATION** vol 2 (2008) PARA 1209. As to the arbitration see also *Brierley Hill Local Board v Pearsall* (1884) 9 App Cas 595, HL; *Re Walker and Beckenham, Kent, District Local Board* (1884) 50 LT 207, DC. The arbitrator's finding of fact is conclusive (*Walshaw v Brighouse Corpn* [1899] 2 QB 286, CA), but his award binds only the parties to it (*Tunbridge Wells Local Board v Akroyd* (1880) 5 Ex D 199, CA).

8 le does not exceed £50: see the Public Health Act 1936 s 278(2) proviso.

9 Public Health Act 1936 s 278(2) proviso.

10 *Cessford v Dover Harbour Board* (1898) 42 Sol Jo 451; *Marriage v East Norfolk Rivers Catchment Board* [1950] 1 KB 284, [1949] 2 All ER 1021, CA. As to whether or not compensation is payable under statute see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 521. Where an act is not authorised by the statute or is done negligently, the proper remedy is the bringing of legal proceedings: see **ADMINISTRATIVE LAW; COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501. If powers are exercised for a collateral object and not for the purposes for which they were given, an injunction may be granted instead of taking proceedings for compensation: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 526.

11 As to actionable damage generally see **NUISANCE** vol 78 (2010) PARA 101 et seq; **TORT** vol 97 (2010) PARA 401.

12 *Herring v Metropolitan Board of Works* (1865) 34 LJMC 224, DC (see note 18); *Hall v Bristol Corpn* (1867) LR 2 CP 322; *Rhodes v Airedale Drainage Comrs* (1876) 1 CPD 402, CA; *Burgess v Northwich Local Board* (1880) 6 QBD 264, DC; *Cessford v Dover Harbour Board* (1898) 42 Sol Jo 451; *Lingké v Christchurch Corpn* [1912] 3 KB 595, CA. See also *Horton v Colwyn Bay and Colwyn UDC* [1908] 1 KB 327, CA (where no compensation was allowed for depreciation of land values caused by works on neighbouring land not belonging to the claimant); *Edwards v Minister of Transport* [1964] 2 QB 134, sub nom *Minister of Transport v Edwards* [1964] 1 All ER 483, CA. As to the same principle under the Lands Clauses Acts generally see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501 et seq. Having regard to the Land Compensation Act 1973 s 44(1) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 811), which confers a right to compensation for works situated on land elsewhere than that taken, the position under the Public Health Act 1936 s 278 may now follow that principle.

13 See *Cessford v Dover Harbour Board* (1898) 42 Sol Jo 451 per Wills J; but see *Durrant v Branksome UDC* [1897] 2 Ch 291 at 305, CA, per Chitty LJ, where it was assumed that compensation would be payable for the damage caused by the silting up of a stream by the discharge sewers. See also the cases cited in note 19. It seems that merely giving a notice of intention to execute work (eg to lay a sewer through private land), acted upon by the claimant, may entitle him to compensation for any loss he may suffer: see *Davis v Witney UDC* (1899) 63 JP 279, CA. However, certain rights to compensation related to the depreciation of the value of an interest in land by physical factors caused by the use of public works are contained in the Land Compensation Act 1973 Pt I (ss 1-19): see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 883 et seq.

14 *Burgess v Northwich Local Board* (1880) 6 QBD 264, DC; *Roberts v Falmouth Sanitary Authority* (1888) 52 JP 741, DC.

15 See the Land Compensation Act 1973 Pt I. As to compensation in respect of physical factors caused by the use of public works see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 883 et seq.

16 *R v Darlington Local Board of Health* (1865) 6 B & S 562, Ex Ch; *Cessford v Dover Harbour Board* (1898) 42 Sol Jo 451. See also the cases cited in note 14.

17 Eg seizure of meat as unsound: *Walshaw v Brighouse Corpn* [1899] 2 QB 286, CA. It has been held that full compensation includes costs in defending summary proceedings brought by the authority: *Re Bater and Birkenhead Corpn* [1893] 2 QB 77, CA; *Walshaw v Brighouse Corpn* above (questioned in *Hobbs v Winchester Corpn* [1910] 2 KB 471, CA); *Huddersfield Corpn v Shaw* (1890) 54 JP 724; but see, to the contrary, *Re Davies and Rhondda UDC* (1899) 80 LT 696. However, where assessed costs have been recovered no further costs may

be recovered in compensation: *Barnett v Eccles Corp*n [1900] 2 QB 423, CA. In an Irish case it was held that compensation cannot be recovered for trade losses caused by publication of reports of proceedings: *Re Smith and Belfast Corp*n [1910] 2 IR 285. As to damage sustained by altering the level of a street when executing paving works see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 231, 506.

18 *Lingké v Christchurch Corp*n [1912] 3 KB 595, CA; distinguishing, or possibly overruling (see at 605-606 per Fletcher Moulton LJ, and at 612 per Buckley LJ), *Herring v Metropolitan Board of Works* (1865) 19 CBNS 510, DC.

19 *Uttley v Todmorden Local Board of Health* (1874) 44 LJCP 19. See also *President, Councillors and Ratepayers of Colac v Summerfield* [1893] AC 187, PC. See, however, the text and note 13.

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122. Recovery of expenses etc.

Any sum which a council is entitled to recover under the Public Health Act 1936¹ for the recovery of which no other provision is made may be recovered as a simple contract debt in any court of competent jurisdiction².

¹ As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

² Public Health Act 1936 s 293(1) (amended by the Local Government (Miscellaneous Provisions) Act 1976 Sch 2). A judge is not disqualified because he is a ratepayer: see PARA 128 note 1. As to charging and recovering establishment charges see PARA 107; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 583. As to the period of limitation for the recovery of simple contract debts see **LIMITATION PERIODS** vol 68 (2008) PARAS 952, 955 et seq.

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123. Expenses recoverable from owners or occupiers.

Where a local authority¹ has incurred expenses for the repayment of which the owner² of the premises³ in respect of which they were incurred is liable under the Public Health Act 1936⁴ or under any Act repealed by it, or by agreement with the authority, those expenses, together with interest⁵ from the date of service of a demand for the expenses, may be recovered by the authority from the person who is the owner⁶ of the premises at the date when the works are completed or, if he has ceased to be the owner of the premises before the date when a demand for the expenses is served, either from him or from the person who is the owner at the date when the demand is served⁷. An authority may recover as expenses the price paid under a general contract with a builder, if it was made on reasonable terms, even though the work might have been done at a lower price⁸.

As from the date of the completion of the works, the expenses and accrued interest are, until recovered, a charge on the premises and on all estates and interests in them⁹.

The authority may by order declare any such expenses to be payable with interest¹⁰ by instalments, within a period not exceeding 30 years, until the whole amount is paid; and any such instalments and interest, or any part of them, may be recovered from the owner or occupier¹¹ for the time being of the premises in respect of which the expenses were incurred¹².

The liability of a person as owner who proves that he received the rent merely as agent or trustee for some other person, and that he has not, and since the date of the service on him of a demand has not, had in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority, is limited to the total amount of the money which he has or has had in his hands¹³. However, a council which is or would be debarred by these provisions from recovering the whole of its expenses from an agent or trustee may recover the whole or any unpaid balance of them from the person on whose behalf the agent or trustee receives the rent¹⁴.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'owner' see PARA 116.

3 As to the meaning of 'premises' see PARA 1 note 34.

4 As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113. See also PARA 871 note 3.

5 The rate of interest is such reasonable rate as the authority may determine: Public Health Act 1936 s 291(3) (amended by the Local Government, Planning and Land Act 1980 Sch 6 para 4).

6 An owner from whom expenses are claimed is not entitled to have other owners of a party wall summoned to bear a share of the expenses: *Debenham v Metropolitan Board of Works* (1880) 6 QBD 112.

7 Public Health Act 1936 s 291(1).

8 *Debenham v Metropolitan Board of Works* (1880) 6 QBD 112. The statute in this case referred to 'all expenses incurred', but it seems that this decision applies to 'expenses reasonably incurred'.

9 Public Health Act 1936 s 291(1). For the purpose of enforcing such a charge, the authority has all the same powers and remedies under the Law of Property Act 1925 as if the authority were a mortgagee by deed having

powers of sale and lease, of accepting surrenders of leases and of appointing a receiver: Public Health Act 1936 s 291(4). As to powers of sale, appointment of a receiver etc see **MORTGAGE** vol 77 (2010) PARA 440 et seq. A sale should be of all interests subject to the charge: *Llantrisant and Llantwit Fardre RDC v Phillips and National Coal Board* (1955) 166 Estates Gazette 596, CA. These provisions do not affect the provisions of the Local Land Charges Act 1975 with respect to local land charges: Public Health Act 1936 s 329 (amended by virtue of the Interpretation Act 1978 s 17(2)). The charge must be registered as a land charge: see the Local Land Charges Act 1975 s 1(1)(a); and **LAND CHARGES** vol 26 (2004 Reissue) PARA 672.

10 As to interest see note 5.

11 If recovered from the occupier, such sums may be deducted by him from the rent of the premises: Public Health Act 1936 s 291(2). An occupier must not be required to pay at any one time any sum in excess of the amount which was due from him on account of rent at, or which has become due from him on account of rent since, the date on which he received a demand from the authority together with a notice requiring him not to pay rent to his landlord without deducting the sum so demanded: s 291(2) proviso.

12 Public Health Act 1936 s 291(2). An order under s 291(2) may be made at any time with respect to any unpaid balance of expenses and accrued interest, but the period for repayment must not extend beyond 30 years from the service of the first demand for the expenses: s 291(2).

13 Public Health Act 1936 s 294.

14 Public Health Act 1936 s 294.

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124. Obstruction of owner by occupier.

If it appears to a magistrates' court that the occupier of premises¹ prevents the owner² from executing any work which he is by or under the Public Health Act 1936³ required to execute, the court may, on a complaint made by the owner, order the occupier to permit the execution of the work⁴.

1 As to the meaning of 'premises' see PARA 1 note 34.

2 As to the meaning of 'owner' see PARA 116.

3 As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

4 Public Health Act 1936 s 289.

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125. Notices requiring the execution of works.

Provision is made for appeals against, and the enforcement of, notices given under the Public Health Act 1936¹ requiring the execution of works, which are expressly declared to be notices in relation to which provisions of Part XII of the Public Health Act 1936² apply³. Any such notice must indicate the nature of the works to be executed, and state the time within which they are to be executed⁴.

1 As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

2 I.e. the Public Health Act 1936 Pt XII (ss 275-347).

3 See the Public Health Act 1936 s 290(1). These provisions apply also to a notice requiring adaptations in a dwelling in a smoke control area: see the Clean Air Act 1993 s 24; and PARA 222.

4 Public Health Act 1936 s 290(2).

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126. Appeal against notice requiring the execution of works.

A person served with a notice requiring the execution of works¹ may appeal to a magistrates' court on any of the following grounds which are appropriate in the circumstances of the particular case²:

- 60 (1) that the notice or requirement is not justified by the terms of the provision under which it purports to have been given or made³;
- 61 (2) that there has been some informality, defect or error in, or in connection with, the notice⁴;
- 62 (3) that the authority has refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary⁵;
- 63 (4) that the time within which the works are to be executed is not reasonably sufficient for the purpose⁶;
- 64 (5) that the notice might lawfully have been served on the occupier of the premises⁷ in question instead of on the owner⁸, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served⁹;
- 65 (6) where the work is work for the common benefit of the premises in question and other premises, that some other person, being the owner or occupier of premises to be benefited, ought to contribute towards the expenses of executing any works required¹⁰.

On the hearing of the appeal the court may make such order as it thinks fit with respect to the person by whom any work is to be executed and the contribution to be made by any other person towards the cost of the work or as to the proportions in which any expenses which may become recoverable by the local authority¹¹ are to be borne by the appellant and such other person¹².

1 As to such notices see PARA 125.

2 Public Health Act 1936 s 290(3).

3 Public Health Act 1936 s 290(3)(a). In the case of an appeal under any of heads (1)-(4) in the text the appellant may serve a copy of the notice of appeal on any other person having an estate or interest in the premises in question: s 290(5).

4 Public Health Act 1936 s 290(3)(b). See also note 3. If and in so far as an appeal is based on this ground, the court must dismiss it if satisfied that the informality, defect or error was not a material one: s 290(4).

5 Public Health Act 1936 s 290(3)(c). See also note 3.

6 Public Health Act 1936 s 290(3)(d). See also note 3. In *Smith v King* (1970) 21 P & CR 560, DC, an appeal against an enforcement notice under town and country planning legislation, it was held that the reasonableness of the period allowed must be tested at the date of the service of the notice, regard being had to the background of the matter.

7 As to the meaning of 'premises' see PARA 1 note 34.

8 As to the meaning of 'owner' see PARA 116.

9 Public Health Act 1936 s 290(3)(e). Where the grounds upon which an appeal is brought include a ground specified under head (5) or head (6) in the text, the appellant must serve a copy of the notice of appeal on each other person referred to: s 290(5).

10 Public Health Act 1936 s 290(3)(f). See also note 9.

11 As to the meaning of 'local authority' see PARA 99.

12 Public Health Act 1936 s 290(5). In exercising its powers the court must have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required (s 290(5)(a)) and, in any case, to the degree of benefit to be derived by the different persons concerned (s 290(5)(b)).

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127. Penalty for and effect of failure to execute works.

Subject to the right of appeal against a notice requiring the execution of works¹, if the person required by such a notice to execute works fails to do so within the time limited by the notice, he is liable to a penalty², and, after conviction, to a penalty³ for each day the default continues⁴.

In the event of such a failure the local authority⁵ may itself execute the works and recover from the person in default the expenses reasonably incurred by it in so doing⁶.

1 See PARAS 125-126.

2 The penalty is a fine not exceeding level 4 on the standard scale: Public Health Act 1936 s 290(6) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

3 The penalty is a fine not exceeding £2 for each day: Public Health Act 1936 s 290(6) (amended by virtue of the Decimal Currency Act 1969 s 10(1)).

4 Public Health Act 1936 s 290(6) (as amended: see notes 2, 3). The magistrate may inquire into the validity of the notice, even though an appeal lies against it (*Fulham Vestry v Solomon* [1896] 1 QB 198, DC; distinguishing *St James and St John, Clerkenwell, Vestry v Feary* (1890) 24 QBD 703, DC), but he has no jurisdiction, where there has been a failure to comply with a notice, to reverse the authority's decision that works are necessary (*St John's, Hackney, Vestry v Hutton* [1897] 1 QB 210, DC). As to the prosecution of offences see PARA 128.

5 As to the meaning of 'local authority' see PARA 99.

6 See the Public Health Act 1936 s 290(6). In proceedings by the local authority against the person served with the notice for the recovery of any expenses which the authority is entitled to recover from him, it is not open to him to raise any question which he could have raised on appeal under s 290: s 290(7). As to the recovery of expenses by a local authority see PARAS 122-123. A claim of overcharging by the authority under s 290 can be brought in the county court under the County Courts Act 1984: *Agodzo v Bristol City Council* [1999] 1 WLR 1971, [1999] All ER (D) 556, CA.

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128. Prosecution of offences.

All offences under the Public Health Act 1936 may be prosecuted under the Magistrates' Courts Act 1980¹.

Where provision is made by or under the Public Health Act 1936 for the imposition of a daily penalty in respect of a continuing offence, the court by which a person is convicted of the original offence may fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court and, where a court has fixed such a period, the daily penalty is not recoverable in respect of any day before the expiration of that period².

Proceedings in respect of an offence created by or under the Public Health Act 1936 must not be taken by any person other than a party aggrieved³, or by a council or other body whose function it is to enforce the provisions or byelaws in question, or by whom or by whose predecessors the byelaw in question was made, without the written consent⁴ of the Attorney General⁵. In certain circumstances a local authority⁶ may prosecute or defend or appear in legal proceedings and may institute civil proceedings in its own name⁷. It may also make representations in its own name in the interests of the inhabitants at certain public inquiries⁸.

1 Public Health Act 1936 s 296 (amended by virtue of the Interpretation Act 1978 s 17(2)(a)). The information must be laid within six months from the time when the offence was committed: Magistrates' Courts Act 1980 s 127(1). Documents may be served in accordance with the Public Health Act 1936 s 285: see PARA 120. As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113. A judge of any court or justice of the peace is not disqualified from acting in cases arising under the Public Health Act 1936 by reason only of his being, as one of several ratepayers or as one of any other class of persons, liable in common with the others to contribute to, or to be benefited by, any rate or fund out of which any expenses of a council are to be defrayed: s 304.

2 Public Health Act 1936 s 297. A continuing penalty may be imposed even where the information is for the original offence only: *James v Wyvill* (1884) 51 LT 237, DC.

3 As to the meaning of 'aggrieved' see PARA 130 note 2; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 66.

4 A police constable may not prosecute without such consent: see *Dodd v Pearson* [1911] 2 KB 383, DC; and note 7.

5 Public Health Act 1936 s 298. See further **MAGISTRATES** vol 29(2) (Reissue) PARA 683. As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 536. As to proof of the consent of the Attorney General, which is a matter of procedure, as distinct from the merits of a case, see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1469. It appears that the consent need not be in writing and does not require great particularity: see *R v Cain*, *R v Schollick* [1976] QB 496, [1975] 2 All ER 900, CA.

6 As to the meaning of 'local authority' see PARA 99.

7 See the Local Government Act 1972 ss 222, 223; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 573. A member or officer of a local authority may be authorised by that authority to prosecute or defend on its behalf: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 573. A police officer is not an officer of a local authority and so cannot be thus authorised: *Kyle v Barbor* (1888) 58 LT 229, DC; *Oberst v Coombs* (1955) 53 LGR 316, DC. Authority must be given before the proceedings are instituted: *Bowyer, Philpott and Payne Ltd v Mather* [1919] 1 KB 419, DC. As to proof of resolutions, appointments of officers, and authority to act see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 575, 625.

8 As to public inquiries see PARA 63.

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129. Appeals and applications to magistrates' courts.

Where the Public Health Act 1936¹ provides for any matter to be determined by, or an application in respect of any matter to be made to, a magistrates' court, or for an appeal to a magistrates' court against a requirement, refusal or other decision of a council², the procedure is by way of complaint for an order, and the Magistrates' Courts Act 1980 applies to the proceedings³.

The time within which any such appeal may be brought is 21 days from the date of service of notice of the council's requirement, refusal or other decision upon the person desiring to appeal, and for this purpose the making of the complaint is deemed to be the bringing of the appeal⁴.

Where upon an appeal a court varies or reverses any decision of a council, it is the council's duty to give effect to the order of the court and, in particular, to grant or issue any necessary consent, certificate or other document, and to make any necessary entry in any register⁵.

¹ As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

² See PARA 99. See also PARA 1 note 14.

³ Public Health Act 1936 s 300(1); Interpretation Act 1978 s 17(2)(a). As to appeals to the Crown Court see PARA 130.

⁴ Public Health Act 1936 s 300(2). It appears that this limitation does not apply to an application or reference which is not an appeal: see *Nalder v Ilford Corpn* [1951] 1 KB 822, [1950] 2 All ER 903. In a case where an appeal lies, the document notifying to the person concerned the council's decision in the matter must state the right of appeal and the time within which it may be brought: Public Health Act 1936 s 300(3). An application for extension of time is not an appeal, therefore a notice need not state the right to make such application: *Nalder v Ilford Corpn*. If an appeal against a notice has been entered, the local authority has no power to withdraw the notice without the landowner's consent: *R v Cannock Justices, ex p Astbury* (1972) 70 LGR 609, 224 Estates Gazette 1037, DC.

⁵ Public Health Act 1936 s 302.

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130. Appeals to the Crown Court.

Where a person¹ aggrieved² by any order, determination or other decision of a magistrates' court under the Public Health Act 1936³ is not authorised to appeal to the Crown Court by any other enactment, he may appeal to the Crown Court⁴, although this does not confer such a right of appeal if each of the parties concerned might under that Act have required that the dispute should be determined by arbitration instead of by a magistrates' court⁵.

1 A local authority is a person for this purpose: *R v Surrey Quarter Sessions, ex p Lilley* [1951] 2 KB 749, [1951] 2 All ER 659, DC; *R v Nottingham Quarter Sessions, ex p Harlow* [1952] 2 QB 601, [1952] 2 All ER 78, DC. As to the meaning of 'person' see PARA 120 note 3.

2 A person ordered to pay costs is a person aggrieved for the purpose of this provision (*R v Lancaster Quarter Sessions, ex p Huyton-with-Roby UDC* [1955] 1 QB 52, sub nom *R v Lancashire Quarter Sessions, ex p Huyton-with-Roby UDC* [1954] 3 All ER 225, DC), and so is a local authority upon which is imposed a legal burden which would have been discharged if the magistrates' decision had not been made (*R v Nottingham Quarter Sessions, ex p Harlow* [1952] 2 QB 601, [1952] 2 All ER 78, DC), but not a local authority upon which no such burden is placed and against which no costs are awarded (*Ealing Corp v Jones* [1959] 1 QB 384, [1959] 1 All ER 286, DC). A prosecutor may not appeal, as a person aggrieved, against an acquittal: *R v Middlesex Justices* (1881) 45 JP 420, DC; *R v London County Keepers of the Peace and Justices* (1890) 25 QBD 357, DC; *R v Wright, ex p Bradford Corp* (1907) 72 JP 23, DC. A person aggrieved must suffer some legal grievance: see *Robinson v Currey* (1881) 7 QBD 465 at 470-471, CA, per Bramwell LJ, and at 475 per Lush LJ. See also *Drapers' Co v Hadder* (1892) 57 JP 200, DC. A person cannot be aggrieved by an act which he has sanctioned: *Harrup v Bayley* (1856) 6 E & B 218. As to the interest which may make a party aggrieved see *Garrett v Middlesex Justices* (1884) 12 QBD 620, DC (mortgagee); *Ross v Taylerson* (1898) 62 JP 181, DC (association of traders). See further **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 66.

3 As to the application of the general provisions of the Public Health Act 1936 to certain other Acts see PARA 113.

4 Public Health Act 1936 s 301 (amended by the Courts Act 1971 Sch 9 Pt I). As to the effect of the decision of a court on an appeal see PARA 129. As to appeals to the Crown Court generally see **COURTS** vol 10 (Reissue) PARAS 628, 629; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1980 et seq.

5 Public Health Act 1936 s 301 proviso. It should be noted that this applies only if each of the parties has a right to go to arbitration. As to appeals under the Public Health Acts Amendment Act 1907 to the Crown Court see s 7(1) (amended by the Courts Act 1971 Sch 9 Pt I; and SI 1971/1292). As to appeals to a Divisional Court by case stated see **MAGISTRATES** vol 29(2) (Reissue) PARA 885 et seq.

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(3) GENERAL PROVISIONS OF THE

131. In general.

Certain provisions of the Control of Pollution Act 1974 have been repealed¹, but provisions relating to noise control² and the general provisions of the Act remain in force³.

1 The repealed provisions of the Control of Pollution Act 1974 mainly related to waste. As to waste see PARA 620 et seq.

The Control of Pollution Act 1974 has effect in its application to the Isles of Scilly with such modifications as the Secretary of State may by order specify, and he may by order vary or revoke any order previously made in pursuance of this provision: s 107. At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. The Control of Pollution Act 1974 (except for ss 101, 109) does not extend to Northern Ireland: s 109(3) (amended by the Clean Air Act 1993 Sch 6; and the Statute Law (Repeals) Act 2004).

2 See PARA 819 et seq.

3 See PARA 132 et seq.

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132. Entry and inspection.

Any person authorised in writing in that behalf by a relevant authority¹ may at any reasonable time, after producing, if so required, evidence of his authority², enter³ upon any land⁴ or vessel⁵ for the purpose of: (1) performing any function conferred on the authority or that person by virtue of the Control of Pollution Act 1974⁷; or (2) determining whether, and if so in what manner, such a function ought to be performed⁸; or (3) determining whether any provision of that Act or of an instrument made by virtue of that Act is being complied with⁹. Any person so authorised may also at any reasonable time carry out such inspections, measurements and tests on the land or vessel or of any articles on it and take away such samples of the land or articles as he considers appropriate for such a purpose¹⁰.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing: (a) that admission to any land or vessel which a person is so entitled to enter has been refused to that person or that refusal is apprehended or that the land or vessel is unoccupied or that the occupier is temporarily absent or that the case is one of emergency¹¹ or that an application for admission would defeat the object of the entry¹²; and (b) that there is reasonable ground for entry upon the land or vessel for the purpose for which entry is required¹³, then, subject to certain stipulations¹⁴, the justice may by warrant under his hand authorise that person to enter the land or vessel, if need be by force¹⁵.

A person who wilfully obstructs another person acting in the exercise of any powers conferred on the other person by virtue of these provisions¹⁶ is guilty of an offence and liable on summary conviction to a penalty¹⁷.

1 As to the meaning of 'relevant authority' see PARA 107 note 3. It is the duty of a relevant authority to make full compensation to any person who has sustained damage by reason of the exercise by a person authorised by it of any powers conferred on the authorised person by virtue of the Control of Pollution Act 1974 s 91 or s 92 (s 92(5)(a)), or the failure of a person so authorised to perform the duty imposed on him by s 92(4) (see note 3) (s 92(5)(b)), except where the damage is attributable to the default of the person who sustained it (s 92(5)). Any dispute as to a person's entitlement to such compensation or as to its amount is to be determined by arbitration: s 92(5).

2 Control of Pollution Act 1974 s 92(1).

3 A person so authorised may take with him onto the land or vessel in question such other persons and such equipment as may be necessary: Control of Pollution Act 1974 s 92(2). Admission to any land or vessel used for residential purposes and admission with heavy equipment to any other land or vessel may not, except in an emergency or where the land or vessel is unoccupied, be demanded as of right in pursuance of s 91(1) unless a notice of the intended entry has been served on the occupier not less than seven days before the demand: s 92(3). A person who, in the exercise of powers conferred on him by s 91 or s 92, enters upon any land or vessel which is unoccupied or from which the occupier is temporarily absent must leave it as effectually secured against trespassers as he found it: s 92(4). 'Notice' means notice in writing: s 105(1).

4 'Land' includes messuages, tenements and hereditaments, houses and buildings of any tenure: Interpretation Act 1978 Sch 1, Sch 2 para 5(b).

5 'Vessel' includes a hovercraft within the meaning of the Hovercraft Act 1968 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 381): Control of Pollution Act 1974 s 105(1).

6 Control of Pollution Act 1974 s 91(1).

7 Control of Pollution Act 1974 s 91(1)(a)(i).

8 Control of Pollution Act 1974 s 91(1)(a)(ii).

9 Control of Pollution Act 1974 s 91(1)(a)(iii).

10 Control of Pollution Act 1974 s 91(1)(b).

11 In the Control of Pollution Act 1974 ss 91, 92, any reference to an emergency is a reference to a case where a person requiring entry to any land or vessel has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry to the land or vessel is necessary to verify the existence of those circumstances or to ascertain their cause or to effect a remedy: s 92(7).

12 Control of Pollution Act 1974 s 91(2)(a).

13 Control of Pollution Act 1974 s 91(2)(b).

14 A justice of the peace may not issue a warrant in pursuance of these powers in respect of any land or vessel unless he is satisfied: (1) that admission to the land or vessel was sought after not less than seven days' notice of the intended entry had been served on the occupier (Control of Pollution Act 1974 s 91(3)(a)); or (2) that admission to the land or vessel was sought in an emergency and was refused by or on behalf of the occupier (s 91(3)(b)); or (3) that the land or vessel is unoccupied (s 91(3)(c)); or (4) that an application for admission to the land or vessel would defeat the object of the entry (s 91(3)(d)).

15 Control of Pollution Act 1974 s 91(2). Such a warrant continues in force until the purpose for which the entry is required has been satisfied: s 91(4).

16 In the Control of Pollution Act 1974 s 91 or s 92.

17 Control of Pollution Act 1974 s 92(6). The penalty is a fine not exceeding level 3 on the standard scale: s 92(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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133. Obtaining information.

A relevant authority¹ may serve on any person² a notice³ requiring him to furnish to the authority, within a period or at times specified in the notice and in a form so specified⁴, any information so specified which the authority reasonably considers that it needs for the purposes of any function⁵ conferred on it by the Control of Pollution Act 1974⁶. A person who fails without reasonable excuse to comply with the requirements of such a notice⁷ or who, in furnishing the information in compliance with it, makes a statement knowing it to be false or misleading in a material particular or recklessly makes such a statement which is false in a material particular⁸, is guilty of an offence⁹ and liable to a penalty¹⁰.

1 As to the meaning of 'relevant authority' see PARA 107 note 3.

2 As to the meaning of 'person' see PARA 120 note 3.

3 As to the meaning of 'notice' see PARA 132 note 3.

4 Provision may be made by regulations for determining the form in which the information is to be required: Control of Pollution Act 1974 s 93(2). At the date at which this volume states the law no such regulations had been made. 'Regulations' means regulations made by the Secretary of State: s 105(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

5 'Functions' includes powers and duties: Control of Pollution Act 1974 s 98(1).

6 Control of Pollution Act 1974 s 93(1). Provision may be made by regulations for restricting the information which may be required in pursuance of s 93(1): s 93(2). At the date at which this volume states the law no such regulations had been made. As to service of documents on and by water undertakers and sewerage undertakers under the Control of Pollution Act 1974 see the Water Act 1989 s 187; applied by the Control of Pollution Act 1974 s 95 (substituted by the Water Act 1989 Sch 25 para 48). As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq; and as to sewerage undertakers see PARA 999.

7 Control of Pollution Act 1974 s 93(3)(a) (s 93(3) substituted by the Environment Act 1995 Sch 19 para 1).

8 Control of Pollution Act 1974 s 93(3)(b) (as substituted: see note 7).

9 Control of Pollution Act 1974 s 93(3) (as substituted: see note 7).

10 The penalty on summary conviction is a fine not exceeding the statutory maximum and on conviction on indictment is a fine or imprisonment for a term not exceeding two years or both: Control of Pollution Act 1974 s 93(3A)(a), (b) (s 93(3A) added by the Environment Act 1995 Sch 19 para 1). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

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Unauthorised disclosure of trade secrets.

134. Unauthorised disclosure of trade secrets.

If a person¹ discloses information relating to any trade secret used in carrying on a particular undertaking and the information has been given to him or obtained by him by virtue of the Control of Pollution Act 1974, then, subject to certain exceptions², that person is guilty of an offence and liable to a penalty³.

1 As to the meaning of 'person' see PARA 120 note 3.

2 A person is not guilty of an offence by virtue of the disclosure of any information if: (1) the disclosure is made in the performance of his duty, or in pursuance of the power under the Control of Pollution Act 1974 s 79(1)(b) (repealed), or with the consent in writing of a person having a right to disclose the information (s 94(2) (a)); or (2) the information is of a kind prescribed for the purposes of this provision and, if regulations made for those purposes provide that information of that kind may only be disclosed in pursuance of the regulations to prescribed persons, the disclosure is to a prescribed person (s 94(2)(b)). 'Prescribed' means prescribed by regulations: s 105(1). At the date at which this volume states the law no such regulations had been made. As to the meaning of 'regulations' see PARA 133 note 4.

3 Control of Pollution Act 1974 s 94(1). The penalty on summary conviction is a fine not exceeding level 5 on the standard scale: s 94(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. 'Trade secret' is not defined in the Control of Pollution Act 1974. As to trade secrets generally see **CONFIDENCE AND DATA PROTECTION**. As to access to environmental information generally see PARA 55.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/3. GENERAL PROVISIONS/(3) GENERAL PROVISIONS OF THE CONTROL OF POLLUTION ACT 1974/135. Legal proceedings.

135. Legal proceedings.

When an offence under the Control of Pollution Act 1974 which has been committed by a body corporate¹ is proved to have been committed with the consent or connivance² of, or to be attributable to any neglect³ on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly⁴. Where the commission by any person of an offence under the Control of Pollution Act 1974 is due to the act or default of some other person, that other person is guilty of the offence⁵.

Where an appeal lies under the Control of Pollution Act 1974 to a magistrates' court against a decision of a relevant authority⁶, it is the authority's duty to include in any document by which it notifies the decision to the person concerned a statement indicating that such an appeal lies⁷.

A judge of any court or a justice of the peace is not disqualified from acting in cases arising out of the Control of Pollution Act 1974 by reason of his being, as one of several ratepayers or as one of any other class of persons, liable in common with the others to contribute to or to be benefited by any rate or fund out of which any expenses of a relevant authority are to be defrayed⁸.

1 As to offences and procedure in relation to corporate bodies see eg **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 38; **MAGISTRATES** vol 29(2) (Reissue) PARA 666. See also the cases cited in note 3.

2 As to the mental element involved in criminal liability see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 8 et seq. As to the relationship of permitting an act to be done to the test of doing so wilfully see also *Lomas v Peek* [1947] 2 All ER 574.

3 As to what constitutes negligence in relation to criminal proceedings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 14. As to the liabilities of directors etc see *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407, CA; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL.

4 Control of Pollution Act 1974 s 87(1). As to the liability of corporations for criminal offences see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 38. As to vicarious liability see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 60-61, 64; **TORT** vol 97 (2010) PARA 702 et seq. Where the affairs of a body corporate are managed by its members, these provisions apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 87(1). As to the meaning of 'functions' see PARA 133 note 5.

5 Control of Pollution Act 1974 s 87(2). A person may be charged with and convicted of an offence by virtue of s 87(2) whether or not proceedings for the offence are taken against any other person: s 87(2).

6 As to the meaning of 'relevant authority' see PARA 107 note 3.

7 Control of Pollution Act 1974 s 87(4). The document must also specify the time within which the appeal must be brought: s 87(4). Where on an appeal the court varies or reverses the authority's decision, it is the duty of the authority to act in accordance with the court's decision: s 87(5).

8 Control of Pollution Act 1974 s 87(6).

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Appeals to the Crown Court.

136. Appeals to the Crown Court.

An appeal against any decision of a magistrates' court in pursuance of the Control of Pollution Act 1974, other than a decision made in criminal proceedings¹, lies to the Crown Court² at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Crown Court by virtue of any other enactment³.

1 As to the distinction between criminal and civil proceedings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 2; **NUISANCE** vol 78 (2010) PARAS 173, 174.

2 As to the Crown Court see **COURTS** vol 10 (Reissue) PARA 621 et seq; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1052.

3 Control of Pollution Act 1974 s 85(1). Where a person appeals to the Crown Court against a decision of a magistrates' court dismissing an appeal against a notice served in pursuance of that Act which was suspended pending determination of the appeal, the notice must again be suspended pending the determination of the Crown Court appeal: s 85(3). As to appeals to magistrates' courts see PARA 129.

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(4) GENERAL PROVISIONS OF THE

137. Form of notices and other documents.

All notices, orders and other documents authorised or required by or under the Public Health (Control of Disease) Act 1984¹ to be given, made or issued by a local authority², and all notices and applications authorised or required by or under that Act to be given or made to or to any officer³ of a local authority, must be in writing⁴.

The Secretary of State⁵ may by regulations⁶ made by statutory instrument prescribe the form of any notice, certificate or other document to be used for the purposes of the Public Health (Control of Disease) Act 1984, and, if forms are so prescribed, those forms or forms to the like effect may be used in all cases to which those forms are applicable⁷.

1 As to the Public Health (Control of Disease) Act 1984 see also PARAS 102 et seq, 138 et seq, 884 et seq.

2 As to the meaning of 'local authority' see PARA 99.

3 'Officer' includes servant: Public Health (Control of Disease) Act 1984 s 74. In relation to the Inner Temple and the Middle Temple, any reference in a provision of the Public Health (Control of Disease) Act 1984 Pt VI (ss 57-79) to an officer or authorised officer of a local authority is a reference to an officer authorised by the Sub-Treasurer or the Under Treasurer, as the case may be, to act for the purposes of that provision: Public Health (Control of Disease) Act 1984 s 75.

4 Public Health (Control of Disease) Act 1984 s 58(1). As from a day to be appointed, s 58 is to be read subject to any provision made in regulations under s 60A: see s 60A(5); and PARA 139.

5 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

6 As to regulations made under these provisions see the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 7, Sch 2; and PARA 893 et seq.

7 Public Health (Control of Disease) Act 1984 s 58(2).

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138. Authentication of documents.

Any notice, order or other document which a local authority¹ is authorised or required by or under the Public Health (Control of Disease) Act 1984 to give, make or issue may be signed on behalf of the authority²: (1) by the proper officer³ of the authority as respects documents relating to matters within his province⁴; or (2) by any officer⁵ of the authority authorised by it in writing to sign documents of the particular kind or, as the case may be, the particular document⁶.

Any document purporting to bear the signature⁷ of an officer:

- 66 (a) expressed to hold an office by virtue of which he is empowered to sign such a document under these provisions⁸; or
- 67 (b) expressed to be duly authorised by the local authority to sign such a document or the particular document⁹,

is deemed, for the purposes of the Public Health (Control of Disease) Act 1984 and of any byelaws and orders made under it, until the contrary is proved, to have been duly given, made or issued by authority of the local authority¹⁰.

1 As to the meaning of 'local authority' see PARA 99.

2 Public Health (Control of Disease) Act 1984 s 59(1). As from a day to be appointed, in s 59(1) and s 59(2), the references to 'local authority' are changed to references to 'relevant health protection authority': s 59(1), (2) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 14(a)). At the date at which this volume states the law no such day had been appointed. See note 6.

3 As to the meaning of 'proper officer' see PARA 889 note 3.

4 Public Health (Control of Disease) Act 1984 s 59(1)(a). See note 6.

5 As to the meaning of 'officer' see PARA 137 note 3.

6 Public Health (Control of Disease) Act 1984 s 59(1)(b). As from a day to be appointed, s 59 is to be read subject to any provision made in regulations under s 60A: see s 60A(5); and PARA 139.

7 For these purposes, 'signature' includes a facsimile of a signature by whatever process reproduced: Public Health (Control of Disease) Act 1984 s 59(3).

8 Public Health (Control of Disease) Act 1984 s 59(2)(a).

9 Public Health (Control of Disease) Act 1984 s 59(2)(b). See note 2.

10 Public Health (Control of Disease) Act 1984 s 59(2). As from a day to be appointed, in s 59(2), the reference to 'byelaws' is changed to a reference to 'regulations': s 59(2) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 14(b)). At the date at which this volume states the law no such day had been appointed. See also note 2.

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139. Service of notice and other documents.

Any notice, order or other document which is required or authorised by or under the Public Health (Control of Disease) Act 1984 to be given to or served on any person may, in any case for which no other provision is made by that Act, be given or served either¹:

- 68 (1) by delivering it to that person²; or
- 69 (2) in the case of a coroner or the proper officer³ of a local authority⁴, by leaving it or sending it in a prepaid letter addressed to him, at either his residence or his office, and, in the case of any other officer⁵ of a local authority, by leaving it, or sending it in a prepaid letter addressed to him, at his office⁶; or
- 70 (3) in the case of any other person, by leaving it, or sending it in a prepaid letter addressed to him, at his usual or last known residence⁷; or
- 71 (4) in the case of an incorporated company or body, by delivering it to its secretary or clerk at its registered or principal office, or by sending it in a prepaid letter addressed to him at that office⁸; or
- 72 (5) in the case of a document to be given to or served on a person as being the owner⁹ of any premises¹⁰ by virtue of the fact that he receives the rackrent¹¹ of the premises as agent for another, or would so receive it if the premises were let at a rackrent, by leaving it, or sending it in a prepaid letter addressed to him, at his place of business¹²; or
- 73 (6) in the case of a document to be given to or served on the owner or the occupier of any premises, if it is not practicable after reasonable inquiry to ascertain the name and address of the person to or on whom it ought to be given or served, or if the premises are unoccupied, by addressing it to the person concerned by the description of 'owner' or 'occupier' of the premises (naming them) to which it relates, and delivering it to some person on the premises, or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises¹³.

As from a day to be appointed¹⁴, the appropriate Minister¹⁵ may by regulations make provision enabling notices, orders and other documents¹⁶ specified in the regulations to be given or served by an electronic communication¹⁷. Such provision must however secure that the notices, orders and other documents specified in the regulations may only be so given or served if (a) the person to whom they are to be given or on whom they are to be served has consented in writing to the receipt of notices, orders and other documents by an electronic communication; and (b) the communication is sent to the number or address specified by that person when giving consent¹⁸. The power to make such regulations¹⁹ is exercisable by statutory instrument²⁰.

1 Public Health (Control of Disease) Act 1984 s 60(1). As from a day to be appointed, the reference to no other provision being made by that Act is changed to a reference to no other provision being made by or under that Act: s 60(1) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 15). At the date at which this volume states the law no such day had been appointed. As from a day to be appointed, the Public Health (Control of Disease) Act 1984 s 60 is to be read subject to any provision made in regulations under s 60A: see s 60A(5); and note 15.

2 Public Health (Control of Disease) Act 1984 s 60(1)(a).

3 As to the meaning of 'proper officer' see PARA 889 note 3.

4 As to the meaning of 'local authority' see PARA 99.

5 As to the meaning of 'officer' see PARA 137 note 3.

6 Public Health (Control of Disease) Act 1984 s 60(1)(b).

7 Public Health (Control of Disease) Act 1984 s 60(1)(c).

8 Public Health (Control of Disease) Act 1984 s 60(1)(d).

9 As to the meaning of 'owner' see PARA 889 note 5.

10 As to the meaning of 'premises' see PARA 1 note 34.

11 As to the meaning of 'rackrent' see PARA 889 note 5.

12 Public Health (Control of Disease) Act 1984 s 60(1)(e).

13 Public Health (Control of Disease) Act 1984 s 60(1)(f).

14 The Public Health (Control of Disease) Act 1984 s 60A is to be brought fully into force by an order under the Health and Social Care Act 2008 s 170(3). At the date at which this volume states the law 21 July 2008 had been appointed but only for the purposes of conferring power to make subordinate legislation.

As to regulations made under the Public Health (Control of Disease) Act 1984 s 60A see the Health Protection (Notification) Regulations 2010, SI 2010/659.

15 For these purposes, 'appropriate Minister' means (1) the Secretary of State, in relation to England; (2) the Welsh Ministers, in relation to Wales: Public Health (Control of Disease) Act 1984 s 60A(6) (s 60A added by the Health and Social Care Act 2008 Sch 11 paras 1, 16) (not yet in force). See note 14. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

The Public Health (Control of Disease) Act 1984 ss 58-60 (see the text and notes 1-13; and PARAS 137, 138) are to be read subject to any provision made in regulations under s 60A: s 60A(5) (as so added) (not yet in force).

16 For these purposes, 'notices, orders and other documents' means notices, orders and other documents authorised or required by or under the Public Health (Control of Disease) Act 1984 to be given or served: s 60A(6) (as added: see note 15) (not yet in force). See note 14.

17 Public Health (Control of Disease) Act 1984 s 60A(1) (as added: see note 15) (not yet in force). See note 14. For these purposes, 'electronic communication' has the same meaning as in the Electronic Communications Act 2000 (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 616): Public Health (Control of Disease) Act 1984 s 60A(6) (as so added) (not yet in force).

18 Public Health (Control of Disease) Act 1984 s 60A(2) (as added: see note 15) (not yet in force). See note 14.

19 Ie under the Public Health (Control of Disease) Act 1984 s 60A.

20 Public Health (Control of Disease) Act 1984 s 60A(3) (as added: see note 15) (not yet in force). See note 14. An instrument containing any such regulations is subject to annulment (1) in the case of regulations made by the Secretary of State, in pursuance of a resolution of either House of Parliament; (2) in the case of regulations made by the Welsh Ministers, in pursuance of a resolution of the National Assembly for Wales: s 60A(4) (as so added) (not yet in force).

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140. Power to enter premises.

Any authorised officer¹ of a local authority², on producing, if so required, some duly authenticated document showing his authority, has a right to enter any premises³ at all reasonable hours⁴:

- 74 (1) for the purpose of ascertaining whether there is, or has been, on or in connection with the premises, any contravention of a relevant provision of the Public Health (Control of Disease) Act 1984⁵, or of byelaws made under it, which it is the duty of the local authority to enforce⁶;
- 75 (2) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the local authority to take any action, or execute any work, under such a provision or such byelaws⁷;
- 76 (3) for the purpose of taking any action, or executing any work, authorised or required by such a provision or such byelaws, or by any order made under such a provision, to be taken, or executed, by the local authority⁸; or
- 77 (4) generally, for the purpose of the performance by the local authority of its functions⁹ under such a provision or such byelaws¹⁰.

Admission to any premises, other than a factory¹¹ or workplace, may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier¹². If it is shown to the satisfaction of a justice of the peace on sworn information in writing: (a) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry¹³; and (b) that there is reasonable ground for entry into the premises for any such purpose as is mentioned in heads (1) to (4) above¹⁴, the justice may by warrant under his hand authorise the local authority by any authorised officer to enter the premises, if need be by force¹⁵. Such a warrant may not be issued unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry¹⁶.

If any person who in compliance with these provisions or a warrant issued under them is admitted into a factory or workplace discloses to any person any information obtained by him in the factory or workplace with regard to any manufacturing process or trade secret, he is, unless the disclosure was made in the performance of his duty, liable on summary conviction to a penalty¹⁷.

1 As to the meaning of 'authorised officer' see PARA 137 note 3.

2 As to the meaning of 'local authority' see PARA 99.

3 As to the meaning of 'premises' see PARA 1 note 34.

4 Public Health (Control of Disease) Act 1984 s 61(1). An authorised officer entering any premises by virtue of s 61, or a warrant issued under it, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant he must leave them as

effectively secured against trespassers as he found them: s 62(1). Nothing in s 61 or s 62 limits the provisions of Pt II (ss 10-45) (prospectively repealed) (see PARA 884 et seq) and Pt IV (ss 49-53) (see PARA 967 et seq) with respect to entry into or upon, and inspection of, common lodging-houses and canal boats: s 62(4). As to the meaning of 'common lodging house' see PARA 958. As to common lodging houses see PARA 958 et seq. As to canal boats see PARA 967 et seq.

As from a day to be appointed, in s 61(1) the reference to any 'authorised officer of a local authority' is replaced by a reference to any 'proper officer of a relevant health protection authority': s 61(1) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 17(1), (2)(a)). Also as from a day to be appointed a new provision is added in regard to the extent of the Public Health (Control of Disease) Act 1984 s 61(1) as follows: Section 61(1) does not authorise entry to any part of premises which is used as a private dwelling (but this does not affect the power of a justice of the peace under s 61(3) to issue a warrant authorising entry to a private dwelling or to any part of premises used as a private dwelling): s 61(2A) (prospectively added by the Health and Social Care Act 2008 Sch 11 paras 1, 17(1), (4)). Also as from a day to be appointed, in the Public Health (Control of Disease) Act 1984 s 62(1) the reference to 'an authorised officer' is replaced by a reference to 'a proper officer ('the officer')' and after the words 'such other person' there is added the words 'and such equipment and materials': s 62(1) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 18(1), (2)). Also as from a day to be appointed, a new provision is added to the Public Health (Control of Disease) Act 1984 s 62 as follows: The officer may for the purpose for which entry is authorised (1) search the premises; (2) carry out measurements and tests of the premises or of anything found on them; (3) take and retain samples of the premises or of anything found on them; (4) inspect and take copies or extracts of any documents or records found on the premises; (5) require information stored in an electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form; and (6) seize and detain or remove anything which the officer reasonably believes to be evidence of any contravention relevant to the purpose for which entry is authorised: s 62(1A) (prospectively added by the Health and Social Care Act 2008 Sch 11 paras 1, 18(1), (3)). Also as from a day to be appointed, the Public Health (Control of Disease) Act 1984 s 62(4) is replaced by a new provision as follows: Nothing in s 61 or s 62 limits the provisions of Pt IIA (ss 45A-45T) and Pt IV, and of regulations made under Pt IIA, with respect to entry into or upon, and inspection of, any premises: s 62(4) (prospectively substituted by the Health and Social Care Act 2008 Sch 11 paras 1, 18(1), (5)). At the date at which this volume states the law no such day had been appointed in regard to amendments to the Public Health (Control of Disease) Act 1984 but 21 July 2008 had been appointed in regard to the amendments to the Public Health (Control of Disease) Act 1984 s 62(1), (1A), (3), (4) but only for the purposes of conferring power to make subordinate legislation.

5 le a provision of the Public Health (Control of Disease) Act 1984 other than s 46 (see PARA 900; and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 920): see s 74. As from a day to be appointed, this is changed to referring to a provision of the 1984 Act (including a provision in regulations made under that Act) other than s 46: see s 74 (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 29(1), (5)). At the date at which this volume states the law 21 July 2008 had been appointed but only for the purposes of conferring power to make subordinate legislation.

6 Public Health (Control of Disease) Act 1984 s 61(1)(a). Also as from a day to be appointed, this provision is replaced by a new provision as follows: for the purposes of ascertaining whether there is, or has been, any contravention of a relevant provision of this Act, or of an order made by a justice of the peace under Pt IIA (ss 45A-45T), which it is the function of the relevant health protection authority to enforce: s 61(1)(a) (prospectively substituted by the Health and Social Care Act 2008 Sch 11 paras 1, 17(1), (2)(b)). At the date at which this volume states the law no such day had been appointed. See also note 4.

7 Public Health (Control of Disease) Act 1984 s 61(1)(b). As from a day to be appointed, in s 61(1)(b)-(d) the references to 'local authority' are replaced by references to 'relevant health protection authority' and the words 'or such byelaws' are replaced by the words 'or in relation to such an order': s 61(1)(b)-(d) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 17(1), (2)(c)). At the date at which this volume states the law no such days had been appointed. See note 4.

8 Public Health (Control of Disease) Act 1984 s 61(1)(c). See notes 4, 7.

9 'Functions' includes powers and duties: Public Health (Control of Disease) Act 1984 s 74.

10 Public Health (Control of Disease) Act 1984 s 61(1)(d). See notes 4, 7.

11 As to the meaning of 'factory' see PARA 897 note 9.

12 Public Health (Control of Disease) Act 1984 s 61(2). As from a day to be appointed, the words 'other than a factory or workplace' are removed: s 61(2) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 17(1), (3), Sch 15 Pt 3). At the date at which this volume states the law no such day had been appointed.

13 Public Health (Control of Disease) Act 1984 s 61(3)(a).

14 Public Health (Control of Disease) Act 1984 s 61(3)(b).

15 Public Health (Control of Disease) Act 1984 s 61(3). Every warrant issued under s 61 continues in force until the purpose for which the entry is necessary has been satisfied: s 62(2). As from a day to be appointed, in s 61(3) the reference to 'the local authority by any authorised officer' is replaced by a reference to 'the relevant health protection authority by any proper officer': s 61(3) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 17(1), (5)). At the date at which this volume states the law no such day had been appointed.

16 Public Health (Control of Disease) Act 1984 s 61(4).

17 Public Health (Control of Disease) Act 1984 s 62(3). The penalty is a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding three months: see s 62(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As from a day to be appointed, s 62(3) is amended so as to refer to a period of 51 weeks instead of a period of three months: see s 62(3) (prospectively amended by the Criminal Justice Act 2003 Sch 26 para 22(1), (4)). At the date at which this volume states the law no such day had been appointed. Also as from a day to be appointed, the Public Health (Control of Disease) Act 1984 s 62(3) is repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 18(1), (4), Sch 15 Pt 3 as from a day appointed under s 170(3). At the date at which this volume states the law 21 July 2008 had been appointed but only for the purposes of conferring power to make subordinate legislation.

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141. Penalty for obstructing execution of the Public Health (Control of Disease) Act 1984.

Any person who wilfully obstructs any person acting in the execution of a relevant provision of the Public Health (Control of Disease) Act 1984¹, or of any byelaw, order or warrant made or issued under it, is liable on summary conviction to a penalty².

1 As to the meaning of 'relevant provision of the Public Health (Control of Disease) Act 1984' see PARA 140 note 5.

2 Public Health (Control of Disease) Act 1984 s 63. The penalty is a fine not exceeding level 1 on the standard scale: see s 63. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As from a day to be appointed, this provision is replaced by a new provision entitled 'offence of wilful obstruction'. A person commits an offence if the person wilfully obstructs any person acting in the execution of a provision of Pt III (ss 46-48) (see PARA 900; and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 920), Pt IV (ss 49-53) (see PARA 967 et seq) or Pt VI (ss 57-79), or of any regulations, order or warrant made or issued under such a provision: s 63(1) (s 63 prospectively substituted by the Health and Social Care Act 2008 Sch 11 paras 1, 19). A person guilty of an offence under the Public Health (Control of Disease) Act 1984 s 63(1) is liable on summary conviction (1) in the case of an offence of wilfully obstructing a person in the execution of a provision of Pt IV or of any regulations made under a provision of Pt IV, to a fine not exceeding level 1 on the standard scale; and (2) in any other case, to a fine not exceeding £20,000: s 63(2) (as so prospectively substituted). At the date at which this volume states the law no such day had been appointed.

Also as from a day or days to be appointed, two more provisions relating to offences by bodies corporate and offences by unincorporated associations are added to the Public Health (Control of Disease) Act 1984. If an offence created by or under the 1984 Act is committed by a body corporate and is proved (a) to have been committed with the consent or connivance of an officer; or (b) to be attributable to any neglect on the part of an officer, the officer (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly: s 63A(1) (ss 63A, 63B prospectively added by the Health and Social Care Act 2008 Sch 11, paras 1, 20). 'Officer', in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity: Public Health (Control of Disease) Act 1984 s 63A(2) (as so prospectively added). If the affairs of a body corporate are managed by its members, s 63A(1) applies to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate: s 63A(3) (as so prospectively added). Proceedings for an offence alleged to have been committed by an unincorporated association are to be brought in the name of the association (and not in that of any of the members): s 63B(1) (as so prospectively added). Rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate: s 63B(2) (as so prospectively added). In proceedings for an offence brought against an unincorporated association, the Magistrates' Courts Act 1980 Sch 3 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 666) applies as it applies to a body corporate: Public Health (Control of Disease) Act 1984 s 63B(3) (as so prospectively added). A fine imposed on an unincorporated association on its conviction for an offence is to be paid out of the funds of the association: s 63B(4) (as so prospectively added). If an offence committed by an unincorporated association is proved (i) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or (ii) to be attributable to any neglect on the part of such an officer or member, the officer or member (as well as the association) is guilty of the offence and liable to be proceeded against and punished accordingly: s 63B(5) (as so prospectively added). In s 63B, 'offence' means an offence created by or under the Public Health (Control of Disease) Act 1984: s 63B(6) (as so prospectively added). At the date at which this volume states the law no such day or days had been appointed.

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142. Restriction on right to prosecute.

Proceedings in respect of an offence created by or under the Public Health (Control of Disease) Act 1984 may not, without the written consent of the Attorney General¹, be taken by any person other than a party aggrieved², or a local authority³ or a body whose function⁴ it is to enforce the provision or byelaw in question, or by whom or by whose predecessors the byelaw was made⁵. However, a constable may take proceedings, without the consent of the Attorney General, in respect of an offence against a byelaw made (whether before or after the passing of the Public Health (Control of Disease) Act 1984) by a district council, Welsh county council, county borough council or London borough council, or a body that was the predecessor of such a council⁶.

1 As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 536.

2 As to the meaning of 'person aggrieved' see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 66.

3 As to the meaning of 'local authority' see PARA 99.

4 As to the meaning of 'function' see PARA 140 note 9.

5 Public Health (Control of Disease) Act 1984 s 64(1). This provision is expressed to be subject to s 64(2) (see the text and note 6): see s 64(1).

As from a day to be appointed, this provision is replaced. Proceedings in respect of an offence created by a provision of, or regulations under, the Public Health (Control of Disease) Act 1984 may not be taken by any person other than (1) a relevant health protection authority; (2) a body whose function it is to enforce the provision or regulation in question; or (3) a person who made (or whose predecessors made) the regulation in question: s 64(1) (prospectively substituted by the Health and Social Care Act 2008 Sch 11 paras 1, 21(1), (2)). At the date at which this volume states the law no such day had been appointed.

Also as from a day to be appointed a new provision is added after the Public Health (Control of Disease) Act 1984 s 64 entitled 'time limits for prosecutions'. Notwithstanding anything in the Magistrates' Courts Act 1980 s 127(1) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 589), a magistrates' court may try an information (or written charge) relating to an offence created by or under the Public Health (Control of Disease) Act 1984 if the information is laid (or the charge is issued) (a) before the end of the period of three years beginning with the date of the commission of the offence; and (b) before the end of the period of six months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to the prosecutor's knowledge: s 64A(1) (s 64A prospectively added by the Health and Social Care Act 2008 Sch 11 paras 1, 22). For the purposes of head (b) above (i) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and (ii) a certificate stating that matter and purporting to be so signed is to be treated as so signed unless the contrary is proved: s 64A(2) (as so prospectively added). At the date at which this volume states the law no such day had been appointed.

6 Public Health (Control of Disease) Act 1984 s 64(2) (amended by the Local Government (Wales) Act 1994 Sch 9 para 13(4)). This provision is repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 21(1), (3), Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed.

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143. Daily penalties for continuing offences.

Where by or under the Public Health (Control of Disease) Act 1984 provision is made for the imposition of a daily penalty in respect of a continuing offence, the court by which a person is convicted of the original offence may fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court¹. Where the court has fixed such a period, the daily penalty is not recoverable in respect of any day before that period expires².

1 Public Health (Control of Disease) Act 1984 s 65.

2 Public Health (Control of Disease) Act 1984 s 65.

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144. Applications to and appeals from a magistrates' court.

Where the Public Health (Control of Disease) Act 1984 provides for any matter to be determined by, or for an application in respect of a matter to be made to, a magistrates' court, the procedure is by way of complaint for an order¹. Where a person aggrieved² by any order, determination or other decision of a magistrates' court under a relevant provision of the Public Health (Control of Disease) Act 1984³ is not by any other enactment authorised to appeal to the Crown Court, he may appeal to the Crown Court⁴.

1 Public Health (Control of Disease) Act 1984 s 67(1). As from a day to be appointed, after the reference to the 1984 Act there is added a reference to a provision contained in regulations made under the Act: s 67(1) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 23(1), (2)). At the date at which this volume states the law 21 July 2008 had been appointed but only for the purposes of conferring power to make subordinate legislation.

A judge of any court or a justice of the peace is not disqualified from acting in cases arising under the Public Health (Control of Disease) Act 1984 by reason only of his being, as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to, or be benefited by, any rate or fund out of which any expenses of a local authority are to be defrayed: s 68. As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'person aggrieved' see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 66.

3 As to the meaning of 'relevant provision of the Public Health (Control of Disease) Act 1984' see PARA 140 note 5.

4 Public Health (Control of Disease) Act 1984 s 67(2). Section 67(2) does not confer a right of appeal from the decision of a magistrates' court in any case if each of the parties concerned might under the Public Health (Control of Disease) Act 1984 have required that the dispute ought to be determined by arbitration instead of by a magistrates' court: s 67(3). Section 67(3) is repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 23(1), (3), Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law 21 July 2008 had been appointed but only for the purposes of conferring power to make subordinate legislation.

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(5) GENERAL PROVISIONS OF THE

145. Offences by bodies corporate.

Where an offence under any provision of the Environmental Protection Act 1990¹ committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly².

1 As to the application of the Environmental Protection Act 1990 to Northern Ireland see s 164(4). As from a day to be appointed, s 164(4) is amended by SI 2002/3153. At the date at which this volume states the law no such day had been appointed.

2 Environmental Protection Act 1990 s 157(1). Where the affairs of a body corporate are managed by its members, s 157(1) applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 157(2). See *Woodhouse v Walsall Metropolitan Borough Council* [1994] 1 BCLC 435, [1994] Env LR 83, DC (the correct test in determining whether an individual was a 'manager' etc was whether that person was in a position to control and guide the company in terms of policy and strategy).

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146. Offences due to fault of others.

Where the commission by any person of an offence¹ is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this provision whether or not proceedings for the offence are taken against the first-mentioned person².

¹ See under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed), Pt II (ss 29-78), Pt IV (ss 86-99), Pt VI (ss 106-127), s 140 (see PARAS 789-790), s 141 (see PARA 716), or s 142 (see PARA 791). As to the prospective repeal of the Environmental Protection Act 1990 Pt I see PARA 159 note 2.

² Environmental Protection Act 1990 s 158.

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147. Service of notices and documents.

Any notice required or authorised by or under the Environmental Protection Act 1990 to be served on or given to an inspector may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office¹. Any such notice required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address², or by sending it by post to him at that address³. Any such notice may: (1) in the case of a body corporate, be served on or given to the secretary or clerk of that body⁴; (2) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business⁵.

The preceding provisions apply to the sending or giving of a document as they apply to the giving of a notice⁶.

1 Environmental Protection Act 1990 s 160(1). See *AMEC Building Ltd v London Borough of Camden* (1997) 55 Con LR 82, [1997] Env LR 330 (requirement not satisfied through service on the wrong person regardless of whether the correct person subsequently receives the notice).

2 For the purposes of the Environmental Protection Act 1990 s 160 and of the Interpretation Act 1978 s 7 (service of documents by post) (see **STATUTES** vol 44(1) (Reissue) PARA 1388) in its application to the Environmental Protection Act 1990 s 160, the proper address of any person on or to whom any such notice is to be served or given is his last known address, except that: (1) in the case of a body corporate or its secretary or clerk, it is the address of the registered or principal office of that body; (2) in the case of a partnership or person having the control or the management of the partnership business, it is the principal office of the partnership: s 160(4). For the purposes of s 160(4), the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: s 160(4). As to the meaning of 'United Kingdom' see PARA 1 note 2. If the person to be served with or given any such notice has specified an address in the United Kingdom other than his proper address within the meaning of s 160(4) as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address will also be treated for the purposes of s 160 and the Interpretation Act 1978 s 7 as his proper address: Environmental Protection Act 1990 s 160(5).

In the case of a local authority which is a body corporate, the persons who can be specified as the alternative addressee for any notice are not confined to the secretary or clerk of the local authority: *Hall v Kingston upon Hull City Council*, *Ireland v Birmingham City Council*, *Baker v Birmingham City Council* [1999] 2 All ER 609, DC. As to the meaning of 'local authority' see PARA 99. A limited company can have both a registered office and a principal office, and service can be effected at either address: *Hewlings v McLean Homes East Anglia Ltd* [2001] 2 All ER 281, DC.

3 Environmental Protection Act 1990 s 160(2).

4 Environmental Protection Act 1990 s 160(3)(a). See *Leeds v London Borough of Islington* (1998) 31 HLR 545, [1998] Env LR 655, DC.

5 Environmental Protection Act 1990 s 160(3)(b).

6 Environmental Protection Act 1990 s 160(6). See *Leeds v London Borough of Islington* (1998) 31 HLR 545, [1998] Env LR 655, DC.

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(6) GENERAL PROVISIONS OF THE

148. Powers of enforcing authorities and persons authorised by them.

Under the Environment Act 1995¹, a person who appears suitable to an enforcing authority² may be authorised in writing by that authority to exercise, in accordance with the terms of the authorisation, any of the powers specified in heads (a) to (l) below for the purpose³: (1) of determining whether any provision of the pollution control enactments⁴ in the case of that authority is being, or has been, complied with⁵; (2) of exercising or performing one or more of the pollution control functions⁶ of that authority⁷; or (3) of determining whether and, if so, how such a function ought to be exercised or performed⁸.

A person who appears suitable to the Environment Agency may be authorised in writing by the Agency to exercise, in accordance with the terms of the authorisation, any of the powers specified in heads (a) to (l) below for the purpose of enabling the Agency to carry out any assessment or prepare any report which the Agency is required to carry out or prepare under its general functions with respect to pollution control⁹.

The powers which a person may be authorised to exercise under these provisions¹⁰ are:

- 78 (a) to enter at any reasonable time (or, in an emergency¹¹, at any time and, if need be, by force) any premises¹² which he has reason to believe it is necessary for him to enter¹³;
- 79 (b) on entering any premises by virtue of head (a) above, to take with him: (i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and (ii) any equipment or materials required for any purpose for which the power of entry is being exercised¹⁴;
- 80 (c) to make such examination and investigation as may in any circumstances be necessary¹⁵;
- 81 (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under head (c) above¹⁶;
- 82 (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under head (c) above¹⁷;
- 83 (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises¹⁸;
- 84 (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary)¹⁹;
- 85 (h) in the case of any such article or substance as is mentioned in head (g) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes: (i) to examine it, or cause it to be examined, and to do,

- or cause to be done, to it anything which he has power to do under head (g) above; (ii) to ensure that it is not tampered with before examination of it is completed; (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control enactments in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those enactments²⁰;
- 86 (i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under head (c) above to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers²¹;
- 87 (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records: (i) which are required to be kept under the pollution control enactments for the enforcing authority under whose authorisation he acts; or (ii) which it is necessary for him to see for the purposes of an examination or investigation under head (c) above, and to inspect and take copies of, or of any entry in, the records²²;
- 88 (k) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by these provisions²³;
- 89 (l) any other power for a purpose falling within heads (1) to (3) above, or the purpose of enabling the Environment Agency to carry out an assessment²⁴, which is conferred by regulations made by the Secretary of State²⁵.

The powers which by virtue of these provisions²⁶ are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control enactments in the case of that authority is being, or has been, complied with include power, in order to obtain the information on which that determination may be made, to carry out experimental borings or other works on those premises and to install, keep or maintain monitoring and other apparatus there²⁷.

Nothing in these provisions²⁸ is to be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure in proceedings in the High Court²⁹.

1 As to the application of the Environment Act 1995 to the Isles of Scilly see s 117. As to the application of ss 108-110 to the Isles of Scilly see the Environmental Protection Act 1990 (Isles of Scilly) Order 2006, SI 2006/1381.

2 'Enforcing authority' means the Secretary of State, the Environment Agency, a waste collection authority or a local enforcing authority: Environment Act 1995 s 108(15) (definition amended by the Anti-social Behaviour Act 2003 s 55(6), (7)). 'Waste collection authority' is to be construed in accordance with the Environmental Protection Act 1990 s 30(3)(a), (b), (bb) (see PARA 620): Environment Act 1995 s 108(15) (definition added by the Anti-social Behaviour Act 2003 s 55(6), (9)). 'Local enforcing authority' means: (1) a local enforcing authority, within the meaning of the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) (see PARA 159 et seq); (2) a local authority, within the meaning of Pt IIA (ss 78A-78YC) (see PARA 761 et seq), in its capacity as an enforcing authority for the purposes of that Part; (3) a local authority for the purposes of Pt IV (ss 86-99) (see PARA 721 et seq) or regulations under that Part; (4) a local authority for the purposes of regulations under the Pollution Prevention and Control Act 1999 s 2 extending to England and Wales (see PARAS 186-188): Environment Act 1995 s 108(15) (definition amended by SI 2000/1973). As from a day to be appointed, the references in the Environment Act 1995 s 108(15) to the Environmental Protection Act 1990 Pt I (prospectively repealed) are repealed: see the Pollution Prevention and Control Act 1999 s 6(2), Sch 3. At the date at which this volume states the law no such day had been appointed. As to the prospective repeal of the Environmental Protection Act 1990 Pt I see PARA 159 note 2. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers

see PARA 59. As to the Environment Agency see PARA 68 et seq. As to the meaning of 'local authority' see PARA 99.

3 Environment Act 1995 s 108(1). Certain functions under s 108 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

4 'Pollution control enactments', in relation to an enforcing authority, means the enactments and instruments relating to the pollution control functions (see note 6) of that authority: Environment Act 1995 s 108(15).

5 Environment Act 1995 s 108(1)(a).

6 'Pollution control functions', in relation to the Environment Agency, means the functions conferred or imposed on it by or under:

- 33 (1) the Alkali etc Works Regulation Act 1906 (repealed);
- 34 (2) the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (see **HEALTH AND SAFETY AT WORK**);
- 35 (3) the Control of Pollution Act 1974 Pt I (ss 11-30) (see PARA 620), Pt IA (ss 30Y, 30Z), Pt II (ss 30A-56) (Pts IA, II relate to Scotland);
- 36 (4) the Control of Pollution (Amendment) Act 1989;
- 37 (5) the Environmental Protection Act 1990 Pt I (prospectively repealed), Pt II (ss 29-78), Pt IIA (ss 78A-78YC) (see PARA 761 et seq);
- 38 (6) the Water Industry Act 1991 Pt IV Ch III (ss 118-141) (see PARA 1047 et seq);
- 39 (7) the Water Resources Act 1991 Pt III (ss 82-104), s 161, ss 161A-161D (see PARA 321 et seq);
- 40 (8) the Clean Air Act 1993 s 19 (see PARA 218);
- 41 (9) the Radioactive Substances Act 1993 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450);
- 42 (10) regulations made by virtue of the European Communities Act 1972 s 2(2), to the extent that the regulations relate to pollution,

and includes the functions conferred or imposed on, or transferred to, it under the Pollution Prevention and Control Act 1999 s 2 (see PARAS 186-188): Environment Act 1995 s 108(15) (definition amended by SI 2000/1973).

'Pollution control functions', in relation to a local enforcing authority, means the functions conferred or imposed on, or transferred to, that authority:

- 43 (a) by or under the Environmental Protection Act 1990 Pt I (prospectively repealed) or Pt IIA (see PARAS 159 et seq, 761 et seq);
- 44 (b) by or under regulations made by virtue of Pt IV (ss 80-91) (see PARA 192 et seq); or
- 45 (c) by or under regulations made by virtue of the European Communities Act 1972 s 2(2), to the extent that the regulations relate to pollution,

and includes the functions conferred or imposed on, or transferred to, that authority under the Pollution Prevention and Control Act 1999 s 2 (see PARAS 186-188): Environment Act 1995 s 108(15) (definition amended by SI 2000/1973).

'Pollution control functions', in relation to the Secretary of State, means any functions which are conferred or imposed upon him by or under any enactment or instrument and which relate to the control of pollution: Environment Act 1995 s 108(15).

'Pollution control functions', in relation to a waste collection authority, means the functions conferred or imposed on it by or under the Environmental Protection Act 1990 Pt II: Environment Act 1995 s 108(15) (definition added by the Anti-social Behaviour Act 2003 s 55(6), (8); and amended by the Clean Neighbourhoods and Environment Act 2005 s 53).

As to modifications of the definitions of 'pollution control functions' in relation to the Environment Agency and in relation to a local enforcing authority for the purpose of the identification and remediation of radioactive

contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 18. See further, as to the effect of the Environment Act 1995 s 108, the Bathing Water Regulations 2008, SI 2008/1097, reg 16(4) (in force from 24 March 2012).

7 Environment Act 1995 s 108(1)(b).

8 Environment Act 1995 s 108(1)(c). See generally the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARA 662 et seq.

9 Environment Act 1995 s 108(2). The general functions with respect to pollution control referred to in the text are those under s 5(3) (see PARA 75): see s 108(2). Section 108(2) only applies where the minister who required the assessment to be carried out, or the report to be prepared, has, whether at the time of making the requirement or at any later time, notified the Agency that the assessment or report appears to him to relate to an incident or possible incident involving or having the potential to involve serious pollution of the environment, serious harm to human health, or danger to life or health: s 108(3).

10 le under the Environment Act 1995 s 108(1), (2): see the text and notes 1-9.

11 'Emergency' means a case in which it appears to the authorised person in question: (1) that there is an immediate risk of serious pollution of the environment or serious harm to human health; or (2) that circumstances exist which are likely to endanger life or health, and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy: Environment Act 1995 s 108(15). 'Authorised person' means a person authorised under s 108(1) or s 108(2) (see the text and notes 1-9): s 108(15).

12 For these purposes, 'premises' includes any land, vehicle, vessel or mobile plant: Environment Act 1995 s 108(15). 'Mobile plant' means plant which is designed to move or to be moved, whether on roads or otherwise: s 108(15).

13 Environment Act 1995 s 108(4)(a). Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of s 108 may only be effected: (1) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question; and (2) either with the consent of a person who is in occupation of those premises or under the authority of a warrant by virtue of Sch 18 (see PARA 149): s 108(6). Except in an emergency, where an authorised person proposes to enter any premises and entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry, or he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry, any entry onto those premises by virtue s 108 may only be effected under the authority of a warrant by virtue of Sch 18 (see PARA 149): s 108(7). In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, s 108(1)-(4) has effect subject to the Atomic Energy Authority Act 1954 s 6(3) (which restricts entry to such premises where they have been declared to be prohibited places for the purposes of the Official Secrets Act 1911): Environment Act 1995 s 108(8). As to the United Kingdom Atomic Energy Authority see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1363 et seq. As to further provisions in relation to powers of entry see PARA 149.

14 Environment Act 1995 s 108(4)(b).

15 Environment Act 1995 s 108(4)(c).

16 Environment Act 1995 s 108(4)(d).

17 Environment Act 1995 s 108(4)(e).

18 Environment Act 1995 s 108(4)(f). The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under s 108(4)(f): s 108(9). Any power to make regulations under s 108 is exercisable by statutory instrument; and a statutory instrument containing any such regulations is subject to annulment pursuant to a resolution of either House of Parliament: s 108(16). At the date at which this volume states the law no regulations had been made under s 108(9).

19 Environment Act 1995 s 108(4)(g). Where an authorised person proposes to exercise the power conferred by s 108(4)(g) in the case of an article or substance found on any premises, he must, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person: s 108(10). Before exercising the power conferred by s 108(4)(g) in the case of any article or substance, an authorised person must consult such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test and such other persons as appear to him appropriate for the purpose of

ascertaining what dangers, if any, there may be in doing anything which he proposes to do or cause to be done under the power: s 108(11).

20 Environment Act 1995 s 108(4)(h).

21 Environment Act 1995 s 108(4)(j). No answer given by a person in pursuance of a requirement imposed under s 108(4)(j) is admissible in evidence in England and Wales against that person in any proceedings: s 108(12).

22 Environment Act 1995 s 108(4)(k).

23 Environment Act 1995 s 108(4)(l).

24 Ie the purposes mentioned in the Environment Act 1995 s 108(2): see the text and note 9.

25 Environment Act 1995 s 108(4)(m).

26 Ie under the Environment Act 1995 s 108(1), (4): see the text and notes 1-8, 10-25.

27 Environment Act 1995 s 108(5).

28 Ie the Environment Act 1995 s 108.

29 Environment Act 1995 s 108(13).

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149. Further powers in relation to powers of entry.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing that there are reasonable grounds for the exercise in relation to any premises¹ of a relevant power² and that one or more of certain conditions³ are fulfilled in relation to those premises, the justice may by warrant authorise an enforcing authority⁴ to designate a person who is to be authorised to exercise the power in relation to those premises⁵, in accordance with the warrant and, if need be, by force⁶. Every warrant under these provisions continues in force until the purposes for which the warrant was issued have been fulfilled⁷.

Information obtained in consequence of the exercise of a relevant power, with or without the consent of any person, is admissible in evidence against that or any other person⁸. Without prejudice to the generality of this provision, information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a relevant power, with or without the consent of any person in occupation of the premises, is admissible in evidence in any proceedings against that or any other person⁹.

Where any person exercises a power to enter any premises for certain purposes¹⁰, it is the duty of the enforcing authority under whose authorisation he acts to make full compensation to any person who has sustained loss or damage by reason of the exercise by the designated person¹¹ of that power or the performance of, or failure of the designated person to perform, the duty imposed to secure premises¹². Compensation is not payable under this provision, however, in respect of any loss or damage if the loss or damage is attributable to the default of the person who sustained it or if it is loss or damage in respect of which compensation is payable by virtue of any other provision of the pollution control enactments¹³. Any dispute as to a person's entitlement to compensation under these provisions, or as to the amount of any such compensation, may be referred to the arbitration of a single arbitrator¹⁴.

A designated person is not liable in any civil or criminal proceedings for anything done in the purported exercise of any relevant power if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it¹⁵.

1 As to the meaning of 'premises' see PARA 148 note 12; definition applied by virtue of the Environment Act 1995 Sch 18 para 1(2).

2 'Relevant power' means a power conferred by Environment Act 1995 s 108 (see PARA 148), including a power exercisable by virtue of a warrant under Sch 18: Sch 18 para 1(1).

3 The conditions are: (1) that the exercise of the power in relation to the premises has been refused; (2) that such a refusal is reasonably apprehended; (3) that the premises are unoccupied; (4) that the occupier is temporarily absent from the premises and the case is one of urgency; or (5) that an application for admission to the premises would defeat the object of the proposed entry: Environment Act 1995 Sch 18 para 2(2). In a case where s 108(6) (see PARA 148 note 13) applies, a justice of the peace may not issue a warrant under Sch 18 by virtue only of being satisfied that the exercise of a power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless he is also satisfied that the notice required by s 108(6) has been given and that the period of that notice has expired: Sch 18 para 2(3).

4 As to the meaning of 'enforcing authority' see PARA 148 note 2; definition applied by virtue of the Environment Act 1995 Sch 18 para 1(2).

5 A person designated as the person who may exercise a relevant power must produce evidence of his designation and other authority before he exercises the power: Environment Act 1995 Sch 18 para 3.

6 Environment Act 1995 Sch 18 para 2(1). A person who, in the exercise of a relevant power, enters on any premises which are unoccupied or whose occupier is temporarily absent must leave the premises as effectually secured against trespassers as he found them: Sch 18 para 5.

7 Environment Act 1995 Sch 18 para 2(4).

8 Environment Act 1995 Sch 18 para 4(1). This is expressed to be subject to s 108(12) (see PARA 148 note 21): see Sch 18 para 4(1).

9 Environment Act 1995 Sch 18 para 4(2).

10 He exercises a power under the Environment Act 1995 s 108(4)(a), s 108(4)(b) or s 108(5): see PARA 148.

11 'Designated person' means an authorised person within the meaning of the Environment Act 1995 s 108 (see PARA 148) and includes a person designated by virtue of Sch 18 para 2 (see the text and notes 1-7): Sch 18 para 1(1).

12 Environment Act 1995 Sch 18 para 6(1). The duty to secure premises is the duty under Sch 18 para 5 (see note 6): see Sch 18 para 6(1).

13 Environment Act 1995 Sch 18 para 6(2). As to the meaning of 'pollution control enactments' see PARA 148 note 4; definition applied by virtue of Sch 18 para 1(2).

14 Environment Act 1995 Sch 18 para 6(4).

15 Environment Act 1995 Sch 18 para 6(5).

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150. Power to deal with cause of imminent danger of serious pollution.

Where, in the case of any article or substance found by him on any premises which he has power to enter, an authorised person¹ has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise)². As soon as may be after any article or substance has been seized and rendered harmless, the authorised person must prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him³. He must also give a signed copy of the report to a responsible person at the premises where the article or substance was found by him⁴, and, unless that person is the owner of the article or substance, serve a signed copy of the report on the owner⁵.

1 'Authorised person' has the same meaning as in the Environment Act 1995 s 108 (see PARA 148 note 11): s 109(3). As to the application of these provisions to the Isles of Scilly see PARA 148 note 1.

2 Environment Act 1995 s 109(1). See also the Environmental Damage (Prevention and Remediation) Regulations 2009, SI 2009/153; and PARA 5.

3 Environment Act 1995 s 109(2).

4 Environment Act 1995 s 109(2)(a).

5 Environment Act 1995 s 109(2)(b). If, where s 109(2)(b) applies, the authorised person cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under s 109(2)(a) (see the text and note 4): see s 109(2)(b).

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151. Offences.

It is an offence for a person intentionally to obstruct an authorised person¹ in the exercise or performance of his powers or duties². A person guilty of such an offence is liable: (1) in the case of an offence of obstructing an authorised person in the execution of his powers to deal with cause of imminent danger of serious pollution³, on summary conviction, to a fine⁴ and, on conviction on indictment, to a fine or to imprisonment, or to both⁵; and (2) in any other case, on summary conviction, to a fine⁶.

It is an offence for a person, without reasonable excuse: (a) to fail to comply with any requirement imposed by the provisions relating to the powers of enforcing authorities and the persons authorised by them⁷; (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the execution of his powers or duties⁸; or (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer⁹. A person guilty of such an offence is liable on summary conviction to a fine¹⁰.

It is also an offence for a person falsely to pretend to be an authorised person¹¹, and a person guilty of such an offence is liable on summary conviction to a fine¹².

1 'Authorised person' means a person authorised under the Environment Act 1995 s 108 (see PARA 148 note 11) and includes a person designated under Sch 18 para 2 (see PARA 149): s 110(6). As to the application of these provisions to the Isles of Scilly see PARA 148 note 1.

2 Environment Act 1995 s 110(1).

3 Environment Act 1995 s 110(4)(a). The power referred to in the text is a power under s 109 (see PARA 150): see s 110(4)(a).

4 Environment Act 1995 s 110(4)(a)(i). The fine must not exceed the statutory maximum: s 110(4)(a)(i). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

5 Environment Act 1995 s 110(4)(a)(ii). The term of imprisonment must not exceed two years: s 110(4)(a)(ii).

6 Environment Act 1995 s 110(4)(b). The fine must not exceed level 5 on the standard scale: s 110(4)(b). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

7 Environment Act 1995 s 110(2)(a). The provisions referred to in the text are those of s 108 (see PARA 148): see s 110(2)(a).

8 Environment Act 1995 s 110(2)(b). The powers and duties referred to in the text are those under or by virtue of s 108: see s 110(2)(b). 'Powers and duties' includes powers or duties exercisable by virtue of a warrant under Sch 18 (see PARA 149): s 110(2)(b).

9 Environment Act 1995 s 110(2)(c). The requirement to answer a question referred to in the text is a requirement pursuant to s 108(4) (see PARA 148): see s 110(2)(c).

10 Environment Act 1995 s 110(5). The fine must not exceed level 5 on the standard scale: see s 110(5).

11 Environment Act 1995 s 110(3).

12 Environment Act 1995 s 110(5). The fine must not exceed level 5 on the standard scale: see s 110(5).

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152. Evidence in connection with certain pollution offences.

Information provided or obtained pursuant to or by virtue of a condition of a relevant licence¹ (including information so provided or obtained, or recorded, by means of any apparatus²) is admissible in evidence in any proceedings, whether against the person subject to the condition or any other person³. Where, by virtue of a condition of a relevant licence, an entry is required to be made in any record as to the observance of any condition of the relevant licence⁴, and the entry has not been made⁵, that fact is admissible in any proceedings as evidence that that condition has not been observed⁶.

1 'Relevant licence' means: (1) any environmental licence; (2) any consent under the Water Industry Act 1991 Pt IV Ch III (ss 118-141) (see PARA 1047 et seq) to make discharges of special category effluent (see PARA 1059 et seq); or (3) any agreement under s 129 (see PARA 1053) with respect to, or to any matter connected with, the reception or disposal of such effluent: Environment Act 1995 s 111(5). 'Condition of a relevant licence' includes any requirement to which a person is subject under, by virtue of or in consequence of a relevant licence: s 111(5). 'Environmental licence' has the same meaning as it has in Pt I (ss 1-56) as it applies in relation to the Environment Agency (see PARA 73 note 20): s 111(5). As to the Environment Agency see PARA 68 et seq.

2 'Apparatus' includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition or effect of any substance, flow, discharge, emission, deposit or abstraction: Environment Act 1995 s 111(5). For the purposes of s 111(2), apparatus is presumed in any proceedings to register or record accurately, unless the contrary is shown or the relevant licence otherwise provides: s 111(3).

3 Environment Act 1995 s 111(2).

4 Environment Act 1995 s 111(4)(a).

5 Environment Act 1995 s 111(4)(b).

6 Environment Act 1995 s 111(4).

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153. Disclosure of information.

Notwithstanding any prohibition or restriction imposed by or under any enactment or rule of law, information of any description may be disclosed:

- 90 (1) by the Environment Agency¹ to, inter alia, a Minister of the Crown or a local enforcing authority²;
- 91 (2) by a Minister of the Crown to, inter alia, the Environment Agency, another Minister of the Crown or a local enforcing authority³; or
- 92 (3) by a local enforcing authority to, inter alia, a Minister of the Crown, the Environment Agency or another local enforcing authority⁴,

for the purpose of facilitating the carrying out by the Environment Agency of any of its functions, by any such minister of any of his environmental functions⁵ or by any local enforcing authority of any of its relevant functions⁶. Nothing in these provisions authorises the disclosure to a local enforcing authority by the Environment Agency or another local enforcing authority of information disclosure of which would, in the opinion of a Minister of the Crown, be contrary to the interests of national security or which was obtained under or by virtue of the Statistics of Trade Act 1947⁷ and which was disclosed to the Environment Agency or any of its officers by the Secretary of State⁸.

No information disclosed to any person under or by virtue of these provisions may be disclosed by that person to any other person otherwise than in accordance with these provisions, or any provision of any other enactment which authorises or requires the disclosure, if that information is information⁹: (a) which relates to a trade secret of any person or which otherwise is or might be commercially confidential in relation to any person¹⁰; or (b) the disclosure of which, otherwise than under or by virtue of these provisions, would in the opinion of a Minister of the Crown be contrary to the interests of national security¹¹. Any authorisation by or under these provisions of the disclosure of information by or to any person is to be taken to authorise the disclosure of that information by or, as the case may be, to any officer of his who is authorised by him to make the disclosure or, as the case may be, to receive the information¹².

1 As to the Environment Agency see PARA 68 et seq.

2 Environment Act 1995 s 113(1)(a). 'Local enforcing authority' means: (1) any local authority within the meaning of the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) (see PARA 99 note 1 head (13)), and the 'relevant functions' of such an authority are its functions under or by virtue of that Part (see PARA 761 et seq); (2) in relation to England and Wales, any local authority within the meaning of regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARAS 186-188); (3) any local authority within the meaning of the Environment Act 1995 Pt IV (ss 80-91) (see PARA 99 note 1 head (16)), and the 'relevant functions' of such an authority are its functions under or by virtue of that Part (see PARA 192 et seq); or (4) in relation to England, any county council for an area for which there are district councils, and the 'relevant functions' of such a county council are its functions under or by virtue of Pt IV; or (5) in relation to England and Wales, any local enforcing authority within the meaning of the Environmental Protection Act 1990 s 1(7) (prospectively repealed) (see PARA 161), and the 'relevant functions' of such an authority are its functions under or by virtue of Pt I (ss 1-28): Environment Act 1995 s 113(5) (definition amended by the Pollution Prevention and Control Act 1999 Sch 2 paras 14, 18(1), (3); and SI 2000/1973). As from a day to be appointed, the provision in head (5) above is repealed by the Pollution Prevention and Control Act 1999 Sch 3. At the date at which this volume states the law no such day had been appointed. As to the prospective repeal of the Environmental Protection Act 1990 Pt I see PARA 159 note 2. As to the meaning of 'local authority' generally see PARA 99.

3 Environment Act 1995 s 113(1)(b).

4 Environment Act 1995 s 113(1)(c).

5 'Environmental functions', in relation to a Minister of the Crown, means any function of that minister, whether conferred or imposed under or by virtue of any enactment or otherwise, relating to the environment: Environment Act 1995 s 113(5). The 'environment' means all, or any, of the following media, namely, the air, water and land (and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground): s 113(5) (definition substituted by the Pollution Prevention and Control Act 1999 Sch 2 paras 14, 18(1), (2)).

6 Environment Act 1995 s 113(1). No person is subject to any civil or criminal liability in consequence of any disclosure made by virtue of this provision: see s 113(1). As to access to environmental information generally see PARA 55.

7 See **TRADE AND INDUSTRY** vol 97 (2010) PARA 1009 et seq.

8 Environment Act 1995 s 113(2). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Environment Act 1995 s 113(3).

10 Environment Act 1995 s 113(3)(a). See also **CONFIDENCE AND DATA PROTECTION**.

11 Environment Act 1995 s 113(3)(b).

12 Environment Act 1995 s 113(4).

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154. Directions.

Any power conferred by the Environment Act 1995 to give a direction includes power to vary or revoke the direction¹. Any direction given to the Environment Agency² under any provision of the Environment Act 1995 or any other enactment, or to any other body or person under any provision of that Act, being a direction to any extent so given for the purpose of implementing any obligations of the United Kingdom³ under the Community treaties, must not be varied or revoked unless, notwithstanding the variation or revocation, the obligations, as they have effect for the time being, continue to be implemented, whether by directions or any other instrument or by any enactment⁴. Any variation or revocation of such a direction must be published in such manner as the minister giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them⁵.

1 Environment Act 1995 s 122(2). Any direction given under the Environment Act 1995 must be in writing: s 122(1).

2 As to the Environment Agency see PARA 68 et seq.

3 Environment Act 1995 s 122(3). As to the meaning of 'United Kingdom' see PARA 1 note 2.

4 Environment Act 1995 s 122(4).

5 Environment Act 1995 s 122(5). Copies of the variation or revocation must be made available to the public; and notice of the variation or revocation, and of where a copy of the variation or revocation may be obtained, must be given, if the direction has effect in England and Wales, in the London Gazette: s 122(5).

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155. Service of documents and notices.

Any notice¹ required or authorised by or under the Environment Act 1995 to be served² on any person may be served by delivering it to him, or by leaving it at his proper address³, or by sending it by post to him at that address⁴. Any such notice may: (1) in the case of a body corporate, be served⁵ on the secretary or clerk of that body⁶; (2) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business⁷.

Where under any provision of the Environment Act 1995 any notice is required to be served on a person who is, or appears to be, in occupation of any premises⁸ then if the name or address of such a person cannot after reasonable inquiry be ascertained, or if the premises appear to be or are unoccupied, that notice may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the premises or by leaving it conspicuously affixed to some building or object on the premises⁹.

These provisions apply to the service of a document as they apply to the service of a notice¹⁰.

1 As to the meaning of 'notice' see PARA 98 note 4.

2 ie whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used: see the Environment Act 1995 s 123(1).

3 For the purposes of the Environment Act 1995 s 123 and of the Interpretation Act 1978 s 7 (service of documents by post) (see **STATUTES** vol 44(1) (Reissue) PARA 1388) in its application to the Environment Act 1995 s 123, the proper address of any person on whom any such notice is to be served is his last known address, except that:

46 (1) in the case of a body corporate or its secretary or clerk, it is the address of the registered or principal office of that body;

47 (2) in the case of a partnership or person having the control or the management of the partnership business, it is the principal office of the partnership,

and for the purposes of this provision the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: s 123(3). As to the meaning of 'United Kingdom' see PARA 1 note 2. If the person to be served with any such notice has specified an address in the United Kingdom other than his proper address within the meaning of s 123(3) as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address will also be treated for the purposes of s 123 and the Interpretation Act 1978 s 7 as his proper address: Environment Act 1995 s 123(4).

4 Environment Act 1995 s 123(1). This provision is expressed to be without prejudice to Sch 7 para 17(2)(d): see s 123(1). Section 123 does not apply to any notice in relation to the service of which provision is made by rules of court: s 123(6).

5 'Serve' is to be construed in accordance with the Environment Act 1995 s 123(1) (see the text and notes 1-4): s 123(8).

6 Environment Act 1995 s 123(2)(a).

7 Environment Act 1995 s 123(2)(b).

8 For these purposes, 'premises' includes any land, vehicle, vessel or mobile plant: Environment Act 1995 s 123(8).

9 Environment Act 1995 s 123(5).

10 Environment Act 1995 s 123(7).

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(7) GENERAL PROVISIONS OF THE

156. Use of fixed penalty receipts for higher tier authorities.

An authority other than a parish or community council¹ may use its fixed penalty receipts² only for the purposes of qualifying functions³ of the authority⁴. An authority must supply the appropriate person⁵ with such information relating to its fixed penalty receipts as the appropriate person may require⁶.

The appropriate person may by regulations⁷:

- 93 (1) make provision for what an authority is to do with its fixed penalty receipts:
 - (a) pending their being used for the purposes of qualifying functions of the authority; (b) if they are not so used before such time after their receipt as may be specified by the regulations⁸;
- 94 (2) make provision for accounting arrangements in respect of an authority's fixed penalty receipts⁹.

Before making such regulations, the appropriate person must consult the authorities to which the regulations are to apply and such other persons as the appropriate person thinks fit¹⁰.

1 See note 2. As to parish and community councils see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 28 et seq, 41 et seq.

2 The amounts to which the Clean Neighbourhoods and Environment Act 2005 s 96 applies which are paid to an authority are called the authority's 'fixed penalty receipts': s 96(2). Section 96 applies in relation to: (1) amounts paid to an authority, other than a parish or community council, in pursuance of notices under the Environmental Protection Act 1990 s 88 (see PARA 722), s 94A (see PARA 726), Sch 3A para 7 (see PARA 728); (2) amounts paid to an authority, other than a parish or community council, in pursuance of notices under the Anti-social Behaviour Act 2003 s 43(1) (see PARA 735); (3) amounts paid to a primary authority, within the meaning of the Clean Neighbourhoods and Environment Act 2005 Pt 6 Ch 1 (ss 55-67) (see PARA 720), in pursuance of notices under s 59 (see PARA 723): s 96(1).

3 For these purposes, the 'qualifying functions' of an authority are: (1) its functions under the Environmental Protection Act 1990 Pt IV (ss 86-99) (see PARA 721 et seq); (2) its functions under the Anti-social Behaviour Act 2003 s 43 (see PARA 735); (3) its functions under the Clean Neighbourhoods and Environment Act 2005 Pt 6 Ch 1 (see PARA 720); and (4) such other of its functions as may be specified in regulations made by the appropriate person: s 96(4). For the purposes of ss 96, 97, 'appropriate person' means: (a) the Secretary of State, in relation to England; (b) the Welsh Ministers, in relation to Wales: s 98(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

Regulations under s 96(4)(d) (see head (4) above) may (in particular) have the effect that an authority may use its fixed penalty receipts for the purposes of any of its functions: s 96(5). As to the regulations made see note 7.

4 Clean Neighbourhoods and Environment Act 2005 s 96(3). Certain functions under s 96 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements are specified for the purposes of s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW**.

5 As to the meaning of 'appropriate person' see note 3.

6 Clean Neighbourhoods and Environment Act 2005 s 96(6).

7 The powers to make regulations conferred by the Clean Neighbourhoods and Environment Act 2005 s 96 are, for the purposes of the Local Government Act 2003 s 100(1), to be regarded as included among the powers mentioned in s 100(2) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 789): Clean Neighbourhoods and Environment Act 2005 s 96(10). The powers to make regulations conferred by ss 96, 97 include: (1) power to make different provision for different purposes (including different provision for different authorities or different descriptions of authority); (2) power to make consequential, supplementary, incidental and transitional provision and savings: s 98(2). Such regulations must be made by statutory instrument: s 98(3). The Secretary of State may not make a statutory instrument containing such regulations unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: s 98(4). In exercise of the powers in s 96(4)(d), (5) (see note 3) and s 98(2), the Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2007, SI 2007/901, have been made. See also PARA 157 note 4.

8 Clean Neighbourhoods and Environment Act 2005 s 96(7)(a). The provision that may be made under s 97(7)(a)(ii) (see head (b) in the text) includes (in particular) provision for the payment of sums to a person (including the appropriate person) other than the authority: s 96(8). See note 7.

9 Clean Neighbourhoods and Environment Act 2005 s 96(7)(b). See note 7.

10 Clean Neighbourhoods and Environment Act 2005 s 96(9).

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157. Use of fixed penalty receipts for lower tier authorities.

The appropriate person¹ must by regulations² make provision relating to:

- 95 (1) the use by a parish or community council³ of amounts received by it in pursuance of notices under specified provisions⁴;
- 96 (2) the use by a person or body designated⁵ as a secondary authority for the purposes of the Clean Neighbourhoods and Environment Act 2005⁶ of amounts received by that person or body in pursuance of the relevant notices⁷.

The regulations may in particular include provision requiring a parish or community council or a person or body referred to in head (2) above: (a) to use the amounts received as specified in heads (1) and (2) above only for the purpose of such of its functions as may be specified in the regulations⁸; (b) to pay sums in respect of those amounts to another person (including the appropriate person)⁹; (c) to supply information in relation to those amounts to the appropriate person¹⁰; (d) to adopt such accounting arrangements in respect of those amounts as may be specified in the regulations¹¹. The regulations may include provision framed by reference to performance categories conferred on a parish or community council by such person as may be specified in the regulations¹².

1 As to the meaning of 'appropriate person' see PARA 156 note 3.

2 As to the making of regulations for these purposes see PARA 156 note 7. As to the regulations made see note 4.

3 As to parish and community councils see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 28 et seq, 41 et seq.

4 Clean Neighbourhoods and Environment Act 2005 s 97(1)(a). The specified provisions are the Environmental Protection Act 1990 s 88 (see PARA 722), the Anti-social Behaviour Act 2003 s 43(1) (see PARA 735) and the Clean Neighbourhoods and Environment Act 2005 s 59 (see PARA 720): see s 97(1)(a). Certain functions under s 97 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements are specified for the purposes of s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW**.

In exercise of the powers in the Clean Neighbourhoods and Environment Act 2005 s 97(1), (2)(a), (b), (c), (3), the Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2007, SI 2007/901, have been made; and in exercise of the powers in the Clean Neighbourhoods and Environment Act 2005 s 97(1)(a), (2)(c) the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2007, SI 2007/739, were made (but see now also the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663).

5 Ie designated under the Clean Neighbourhoods and Environment Act 2005 s 58(3): see PARA 720.

6 Ie the Clean Neighbourhoods and Environment Act 2005 Pt 6 Ch 1 (ss 55-67): see PARA 720.

7 Clean Neighbourhoods and Environment Act 2005 s 97(1)(b). The notices are those under s 59: see PARA 720. As to the regulations made under this provision see note 4.

8 Clean Neighbourhoods and Environment Act 2005 s 97(2)(a). As to the regulations made under this provision see note 4.

9 Clean Neighbourhoods and Environment Act 2005 s 97(2)(b). As to the regulations made under this provision see note 4.

10 Clean Neighbourhoods and Environment Act 2005 s 97(2)(c). As to the regulations made under this provision see note 4.

11 Clean Neighbourhoods and Environment Act 2005 s 97(2)(d). At the date at which this volume states the law, no regulations had been made under this provision.

12 Clean Neighbourhoods and Environment Act 2005 s 97(3). As to the regulations made under this provision see note 4.

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4. INTEGRATION OF POLLUTION CONTROL

(1) INTRODUCTION

158. European Union legislation.

European Union legislation introduced the concept of integrated pollution prevention and control¹ which in England and Wales is implemented by the Pollution Prevention and Control Act 1999², ultimately replacing Part I of the Environmental Protection Act 1990³.

1 See PARA 6. This followed introduction of such control in the United Kingdom in 1990 and there were also similar initiatives in several other member states.

2 See PARAS 186-188.

3 I.e. the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed): see PARA 159 et seq. As to the prospective repeal and replacement of Pt I see PARA 159 note 2.

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(2) INTEGRATED POLLUTION CONTROL

(i) In general

159. Prescribed processes and prescribed substances.

The Secretary of State¹ may, by regulations, prescribe any description of process² as a process for the carrying on of which after a prescribed date an authorisation³ is required⁴. The regulations may frame the description of a process by reference to any characteristics of the process or the area or other circumstances in which the process is carried on or the description of person carrying it on⁵. The regulations may prescribe or provide for the determination under the regulations of different dates for different descriptions of persons; and may include such transitional provisions as the Secretary of State considers necessary or expedient as respects the making of applications for authorisations and suspending the application of the provision requiring authorisations⁶ until the determination of applications made within the period allowed by the regulations⁷. The regulations must, as respects each description of process, designate it as one for central control or one for local control⁸.

The Secretary of State may, by regulations, prescribe any description of substance⁹ as a substance the release of which into the environment¹⁰ is subject to control¹¹. Such regulations may:

- 97 (1) prescribe separately, for each environmental medium¹², the substances the release of which into that medium is to be subject to control¹³; and
- 98 (2) provide that a description of substance is only prescribed, for any environmental medium, so far as it is released into that medium in such amounts over such periods, in such concentrations or in such other circumstances as may be specified in the regulations¹⁴.

In relation to a substance of a description which is prescribed for releases into the air, the regulations may designate the substance as one for central control or one for local control¹⁵.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 In the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed), 'process' means any activities carried on in Great Britain, whether on premises or by means of mobile plant, which are capable of causing pollution of the environment; and 'prescribed process' means a process prescribed under s 2(1) (see the text and note 4): s 1(1), (5). See also *Dudley Metropolitan Borough Council v Henley Foundries Ltd* [1999] Env LR 895 (malfunctioning equipment fell within the definition of 'prescribed process'). For the purposes of the Environmental Protection Act 1990 s 1(5), 'activities' means industrial or commercial activities or activities of any other nature whatsoever (including, with or without other activities, the keeping of a substance): s 1(6). 'Great Britain' includes so much of the adjacent territorial sea as is, or is treated as, relevant territorial waters for the purposes of the Water Resources Act 1991 Pt III (ss 82-104) (see PARA 289 et seq): Environmental Protection Act 1990 s 1(6) (definition amended by the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 56(1)). As to the meaning of 'Great Britain' generally see PARA 1 note 2. 'Mobile plant' means plant which is designed to move or to be moved whether on roads or otherwise: Environmental Protection Act 1990 s 1(6). As to the meaning of 'pollution of the environment' see PARA 160 note 16. As to the meaning of 'substance' see note 9.

The Environmental Protection Act 1990 Pt I is repealed, as from a day to be appointed, by the Pollution Prevention and Control Act 1999 Sch 3. The Pollution Prevention and Control Act 1999 (see PARA 186 et seq) introduces a new framework for regulations to implement EC Council Directive 96/61 (OJ L257, 10.10.96, p 26) concerning integrated pollution prevention and control (repealed and replaced by European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version)): see PARA 6. Until regulations are applied to a specific sector or industry, the provisions of the Environmental Protection Act 1990 Pt I (prospectively repealed) (and subordinate legislation made thereunder) continue to apply. As to the regulations that have been made in implementation of the new regime see PARA 186 note 2. See further PARA 160 et seq.

3 In the Environmental Protection Act 1990 Pt I (prospectively repealed), 'authorisation' means an authorisation for a process (whether on premises or by means of mobile plant) granted under s 6 (see PARA 162); and a reference to the conditions of an authorisation is a reference to the conditions subject to which at any time the authorisation has effect: s 1(9). As to conditions of authorisations see PARA 165.

4 Environmental Protection Act 1990 s 2(1). As to the requirement for authorisation see s 6 (prospectively repealed); and PARA 162. The Environmental Protection (Prescribed Processes and Substances) Regulations 1991, SI 1991/472 (amended by SI 1991/836; SI 1992/614; SI 1993/1749; SI 1993/2405; SI 1994/1271; SI 1994/1329; SI 1995/3247; SI 1996/2678; SI 1998/767; and SI 2000/1973) were made but they have been revoked and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARA 662 et seq.

5 Environmental Protection Act 1990 s 2(2). See also the regulations mentioned in note 4.

6 In suspending the application of the Environmental Protection Act 1990 s 6(1): see PARA 162.

7 Environmental Protection Act 1990 s 2(3). See also the regulations mentioned in note 4.

8 Environmental Protection Act 1990 s 2(4). See also the regulations mentioned in note 4.

9 In the Environmental Protection Act 1990 Pt I (prospectively repealed), 'substance' is to be treated as including electricity or heat: s 1(13). 'Prescribed substance' means any substance of a description prescribed in regulations under s 2(5) (see the text and note 11) or, in the case of a substance of a description prescribed only for releases in circumstances specified under head (2) in the text, means any substance of that description which is released in those circumstances: ss 1(13), 2(7).

10 In the Environmental Protection Act 1990 Pt I (prospectively repealed), the 'environment' consists of all, or any, of the following media, namely, the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground: s 1(2). A substance is 'released' into any environmental medium whenever it is released directly into that medium whether it is released into it within or outside Great Britain, and 'release' includes:

48 (1) in relation to air, any emission of the substance into the air;

49 (2) in relation to water, any entry (including any discharge) of the substance into water;

50 (3) in relation to land, any deposit, keeping or disposal of the substance in or on land,

and for this purpose 'water' and 'land' must be construed in accordance with s 1(11), (12) (s 1(11) as amended): s 1(10). For the purpose of determining into what medium a substance is released:

51 (a) any release into: (i) the sea or the surface of the seabed; (ii) any river, watercourse, lake, loch or pond (whether natural or artificial or above or below ground) or reservoir or the surface of the riverbed or of other land supporting such waters; or (iii) ground waters, is a release into water;

52 (b) any release into: (i) land covered by water falling outside head (a) above or the water covering such land; or (ii) the land beneath the surface of the seabed or of other land supporting waters falling within head (a)(ii) above, is a release into land; and

53 (c) any release into a sewer (within the meaning of the Water Industry Act 1991 (see PARA 998)) must be treated as a release into water,

but a sewer and its contents must be disregarded in determining whether there is pollution of the environment at any time: Environmental Protection Act 1990 s 1(11) (amended by the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 56(1)). In the Environmental Protection Act 1990 s 1(11), 'ground waters' means any waters contained in underground strata, or in: (A) a well, borehole or similar work sunk into underground strata, including any adit or passage constructed in connection with the well, borehole or work for facilitating the collection of water in the well, borehole or work; or (B) any excavation into underground strata

where the level of water in the excavation depends wholly or mainly on water entering it from the strata: s 1(12).

11 Environmental Protection Act 1990 s 2(5). The control is under s 6 and s 7 (see PARAS 162, 165): see s 2(5).

12 As to the meaning of 'environmental medium' see note 10.

13 Environmental Protection Act 1990 s 2(6)(a).

14 Environmental Protection Act 1990 s 2(6)(b).

15 Environmental Protection Act 1990 s 2(6).

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160. Emission limits and quality objectives.

The Secretary of State¹ may make regulations² establishing standards, objectives or requirements in relation to particular prescribed processes³ or particular substances⁴. Regulations under this provision⁵ may:

- 99 (1) in relation to releases⁶ of any substance from prescribed processes into any environmental medium⁷, prescribe standard limits⁸ for:
 - 1
 - 1. (a) the concentration, the amount or the amount in any period of that substance which may be so released⁹; and
 - 2. (b) any other characteristic of that substance in any circumstances in which it may be so released¹⁰;
 - 2
 - 100 (2) prescribe standard requirements for the measurement or analysis of, or of releases of, substances for which limits have been set under head (1) above¹¹; and
 - 101 (3) in relation to any prescribed process, prescribe standards or requirements as to any aspect of the process¹².

Regulations may establish for any environmental medium (in all areas or in specified areas) quality objectives or quality standards in relation to any substances which may be released into that or any other medium from any process¹³.

The Secretary of State may make plans for:

- 102 (i) establishing limits for the total amount, or the total amount in any period, of any substance which may be released into the environment in, or in any area within, the United Kingdom¹⁴;
- 103 (ii) allocating quotas as respects the release of substances to persons carrying on processes in respect of which any such limit is established¹⁵;
- 104 (iii) establishing limits of the descriptions specified in head (1) above so as progressively to reduce pollution of the environment¹⁶;
- 105 (iv) the progressive improvement in the quality objectives and quality standards established by regulations¹⁷.

The Secretary of State may, from time to time, revise any plan so made¹⁸.

The United Kingdom Greenhouse Gas Emissions Trading Scheme has been made on behalf of the Secretary of State¹⁹; and regulations have been made in furtherance of the United Kingdom's European Union obligations²⁰.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Ie under the Environmental Protection Act 1990 s 3(2) or s 3(4) (see the text and notes 5-13). At the date at which this volume states the law no regulations had been made under these provisions. Regulations or plans under s 3 may be made for any purposes of Pt I (ss 1-28) (prospectively repealed) or for other purposes: s 3(6). See note 14.

As to the prospective repeal and replacement of Pt I see PARA 159 note 2.

3 As to the meanings of 'prescribed process' and 'process' see PARA 159.

4 Environmental Protection Act 1990 s 3(1). As to the meaning of 'substance' see PARA 159 note 9.

5 Regulations under the Environmental Protection Act 1990 s 3(2) may make different provision in relation to different cases, including different provision in relation to different processes, descriptions of person, localities or other circumstances: s 3(3). See also s 3(6); and note 2.

6 As to the meaning of 'release' see PARA 159 note 10.

7 As to the meanings of 'environment' and 'environmental medium' see PARA 159 note 10.

8 Environmental Protection Act 1990 s 3(2)(a).

9 Environmental Protection Act 1990 s 3(2)(a)(i).

10 Environmental Protection Act 1990 s 3(2)(a)(ii).

11 Environmental Protection Act 1990 s 3(2)(b).

12 Environmental Protection Act 1990 s 3(2)(c).

13 Environmental Protection Act 1990 s 3(4). See also s 3(6); and note 2.

14 Environmental Protection Act 1990 s 3(5)(a). As to the meaning of 'United Kingdom' see PARA 1 note 2.

Section 3(5)-(7) is repealed, in relation to Northern Ireland, by the Northern Ireland Act 1998 Sch 15 para 17 and as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

15 Environmental Protection Act 1990 s 3(5)(b). See note 14.

16 Environmental Protection Act 1990 s 3(5)(c). See note 14. In Pt I (prospectively repealed), 'pollution of the environment' means pollution of the environment due to the release (into any environmental medium) from any process of substances which are capable of causing harm to man or any other living organisms supported by the environment: s 1(1), (3). 'Harm' means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property; and 'harmless' has a corresponding meaning: s 1(1), (4).

17 Environmental Protection Act 1990 s 3(5)(d). This provision refers to regulations made under s 3(4): see the text and note 13. See note 14.

18 Environmental Protection Act 1990 s 3(5). The Secretary of State must give notice in the London, Edinburgh and Belfast Gazettes of the making and the revision of any plan under s 3(5) and must make the documents containing the plan, or the plan as so revised, available for inspection by members of the public at the places specified in the notice: s 3(7). See also s 3(6); and note 2. See note 14.

19 See the Waste and Emissions Trading Act 2003 s 39; and PARA 260.

20 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925; and PARA 260.

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161. Discharge and scope of functions.

The following provisions determine the authority by whom the functions conferred or imposed by Part I of the Environmental Protection Act 1990¹ otherwise than on the Secretary of State are exercisable and the purposes for which they are exercisable². Generally, the integrated pollution control regime is centrally controlled, but local authorities have responsibilities in relation to air pollution control³.

Those functions, in their application to prescribed processes⁴ designated for central control, are functions of the Environment Agency⁵, and are exercisable for the purpose of preventing or minimising pollution of the environment⁶ due to the release of substances⁷ into any environmental medium⁸.

Those functions, in their application to prescribed processes designated for local control, are functions of:

- 106 (1) in the case of a prescribed process carried on (or to be carried on) by means of a mobile plant⁹, where the person carrying on the process has his principal place of business in England and Wales, the local authority¹⁰ in whose area that place of business is¹¹;
- 107 (2) in any other cases, where the prescribed processes are (or are to be) carried on in England and Wales, the local authority in whose area they are (or are to be) carried on¹².

The functions applicable to such processes are exercisable for the purpose of preventing or minimising pollution of the environment due to the release of substances into the air (but not into any other environmental medium)¹³.

The Secretary of State may, as respects the functions under Part I of the Environmental Protection Act 1990 being exercised by a local authority specified in the direction, direct that those functions are to be exercised instead by the Environment Agency while the direction remains in force or during a period specified in the direction¹⁴. Such a transfer of functions does not make them exercisable by the Agency for the purpose of preventing or minimising pollution of the environment due to releases of substances into any other environmental medium than the air¹⁵. Such a direction may transfer those functions as exercisable in relation to all or any description of prescribed processes carried on by all or any description of persons (a 'general direction') or in relation to a prescribed process carried on by a specified person (a 'specific direction')¹⁶.

It is the duty of local authorities to follow such developments in technology and techniques for preventing or reducing pollution of the environment due to releases of substances from prescribed processes as concern releases into the air of substances from prescribed processes designated for local control¹⁷.

It is the duty of the Environment Agency and the local enforcing authorities to give effect to any directions given to them under any provision of Part I of the Environmental Protection Act 1990¹⁸.

1 le the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed). As to the prospective repeal and replacement of Pt I see PARA 159 note 2.

2 Environmental Protection Act 1990 s 4(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to air quality and air pollution see also PARA 190 et seq.

4 As to the meanings of 'prescribed process' and 'process' see PARA 159.

5 The Environmental Protection Act 1990 s 4, s 6 (see PARA 162) and s 27 (see PARA 185) refer to the 'appropriate agency'; for the purposes of Pt I (prospectively repealed), 'appropriate agency' means, in relation to England and Wales, the Environment Agency: s 1(1), (14) (added by the Environment Act 1995 Sch 22 para 45(4)). As to the Environment Agency see PARA 68 et seq.

6 As to the meaning of 'pollution of the environment' see PARA 160 note 16; and as to the meaning of 'environment' see PARA 159 note 10.

7 As to the meaning of 'release' see PARA 159 note 10; and as to the meaning of 'substance' see PARA 159 note 9.

8 Environmental Protection Act 1990 s 4(2) (amended by the Environment Act 1995 Sch 22 para 46(2)). As to the meaning of 'environmental medium' see PARA 159 note 10.

9 As to the meaning of 'mobile plant' see PARA 159 note 2.

10 As to the meaning of 'local authority' see PARA 99.

11 Environmental Protection Act 1990 s 4(3)(a) (s 4(3)(a), (b) substituted by the Environment Act 1995 Sch 22 para 46(3)).

12 Environmental Protection Act 1990 s 4(3)(b) (as substituted: see note 11).

13 Environmental Protection Act 1990 s 4(3). This is expressed to be subject to s 4(4): see the text and note 14. In England and Wales, a local authority, in exercising the functions conferred or imposed on it by virtue of s 4(3), must have regard to the strategy for the time being published pursuant to the Environment Act 1995 s 80 (see PARA 192): Environmental Protection Act 1990 s 4(4A) (added by the Environment Act 1995 Sch 22 para 46(5), (8)).

14 Environmental Protection Act 1990 s 4(4) (amended by the Environment Act 1995 Sch 22 para 46(4)). A direction under the Environmental Protection Act 1990 s 4(4) may include such saving and transitional provisions as the Secretary of State considers necessary or expedient: s 4(7).

The Secretary of State, on giving or withdrawing a direction under s 4(4), must:

54 (1) in the case of a general direction (see the text and note 16): (a) forthwith serve notice of it on the Environment Agency and on the local enforcing authorities affected by the direction; and (b) cause notice of it to be published as soon as practicable in the London Gazette and in at least one newspaper circulating in the area of each authority affected by the direction;

55 (2) in the case of a specific direction (see the text and note 16): (a) forthwith serve notice of it on the Environment Agency, the local enforcing authority and the person carrying on or appearing to the Secretary of State to be carrying on the process affected; and (b) cause notice of it to be published as soon as practicable in the London Gazette and in at least one newspaper circulating in the authority's area,

and any such notice must specify the date at which the direction is to take (or took) effect and (where appropriate) its duration: s 4(8) (amended by the Environment Act 1995 Sch 22 para 46(6)(a), (7), Sch 24). The 'enforcing authority', in relation to England and Wales, is the Environment Agency or the local authority by which, under the Environmental Protection Act 1990 s 4, the functions conferred or imposed by Pt I (prospectively repealed) otherwise than on the Secretary of State are for the time being exercisable in relation respectively to releases of substances into the environment or into the air; and 'local enforcing authority' means any such local authority: s 1(7) (definition amended by the Environment Act 1995 Sch 22 para 45(2)). The requirements of head (1)(b) above or, as the case may be, of head (2) above do not apply in any case where, in the opinion of the Secretary of State, the publication of notice in accordance with that provision would be contrary to the interests of national security: Environmental Protection Act 1990 s 4(8A) (added by the Environment Act 1995 Sch 22 para 46(8)).

- 15 Environmental Protection Act 1990 s 4(5) (amended by the Environment Act 1995 Sch 22 para 46(6)(a), (b)).
- 16 Environmental Protection Act 1990 s 4(6).
- 17 Environmental Protection Act 1990 s 4(9) (substituted by the Environment Act 1995 Sch 22 para 46(9)).
- 18 Environmental Protection Act 1990 s 4(10) (amended by the Environment Act 1995 Sch 22 para 46(10)).

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(ii) Authorisations

162. General provisions relating to authorisations.

No person may carry on a prescribed process¹ after the date prescribed or determined for that description of process by or under regulations² (but subject to any transitional provision made by the regulations) except under an authorisation granted by the enforcing authority³ and in accordance with the conditions to which it is subject⁴. An application for an authorisation must be made to the enforcing authority⁵ and must be accompanied:

- 108 (1) in a case where a charge prescribed by a charging scheme⁶ is required to be paid to the Environment Agency⁷ in respect of the application, by the charge so prescribed⁸; or
- 109 (2) in any other case, by the fee prescribed⁹.

Where an application is duly made to the enforcing authority, the authority must either grant the authorisation subject to conditions¹⁰ or refuse the application¹¹. An application may not be granted unless the enforcing authority considers that the applicant will be able to carry on the process so as to comply with the conditions which would be included in the authorisation¹². The Secretary of State¹³ may, if he thinks fit in relation to any application for an authorisation, give to the enforcing authority directions as to whether or not the authority should grant the authorisation¹⁴. The enforcing authority must, as respects each authorisation in respect of which it has functions under Part I of the Environmental Protection Act 1990, from time to time, but not less frequently than once in every period of four years, carry out a review of the conditions of the authorisation¹⁵.

1 As to the meanings of 'prescribed process' and 'process' see PARA 159.

2 I.e. regulations under the Environmental Protection Act 1990 s 2(1): see PARA 159.

3 As to the meaning of 'enforcing authority' see PARA 161 note 14.

4 Environmental Protection Act 1990 s 6(1). As to the meaning of 'authorisation' see PARA 159 note 3. As to conditions of authorisations see PARA 165. Contravention of this provision is an offence: see PARA 181.

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

5 Environmental Protection Act 1990 s 6(2). Applications must be made in accordance with Sch 1 Pt I (prospectively repealed): see PARAS 163-164.

As to the determination of applications made in the transitional period see *R (on the application of Furness) v Environment Agency* [2001] EWHC Admin 1058, [2002] Env LR 26, sub nom *Furness v Environment Agency* [2001] All ER (D) 242 (Dec) (application made whilst the Environmental Protection Act 1990 Pt I (prospectively repealed) was still in force was 'duly made' and therefore valid).

6 I.e. a charge prescribed by a scheme under the Environment Act 1995 s 41: see PARA 97.

7 As to the Environment Agency see PARA 68 et seq. See also PARA 161 note 5.

8 Environmental Protection Act 1990 s 6(2)(a) (substituted by the Environment Act 1995 Sch 22 para 48).

9 Environmental Protection Act 1990 s 6(2)(b) (amended by the Environment Act 1995 Sch 22 para 48). Fees are prescribed under the Environmental Protection Act 1990 s 8(2)(a) (see PARA 166): s 6(2).

10 The conditions required or authorised to be imposed by the Environmental Protection Act 1990 s 7: see PARA 165.

As to the nature of the substantive decision-making process see *Levy v Environment Agency* [2002] EWHC 1633 (Admin), [2003] Env LR 11 (any decision to grant or refuse an authorisation was essentially a technical decision which would be difficult to challenge by way of judicial review).

11 Environmental Protection Act 1990 s 6(3).

12 Environmental Protection Act 1990 s 6(4). As to the application of this provision see *R v Secretary of State for the Environment, ex p West Wiltshire District Council* [1997] JPL 210, [1996] Env LR 312 (correct test was whether an applicant was able to comply with conditions rather than whether it was merely possible to comply).

13 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

14 Environmental Protection Act 1990 s 6(5).

15 Environmental Protection Act 1990 s 6(6) (amended by SI 2000/1973). The Secretary of State may, by regulations, substitute for the period for the time being specified in the Environmental Protection Act 1990 s 6(6) such other period as he thinks fit: s 6(7). At the date at which this volume states the law no such regulations had been made.

However, a review of the conditions of an authorisation is not required under s 6(6) if: (1) the prescribed process covered by the authorisation is carried on in a new Part A installation or by means of a new Part A mobile plant; (2) the prescribed process covered by the authorisation is carried on in an existing Part A installation or by means of an existing Part A mobile plant and the review would be carried out within the period of two years ending at the beginning of the relevant period for that installation or mobile plant; or (3) the prescribed process covered by the authorisation is carried on in an existing Part B installation or by means of an existing Part B mobile plant and the review would be carried out within the period of two years ending on the relevant date for that installation or mobile plant: s 6(6A) (s 6(6A), (6B) added by SI 2000/1973). In the Environmental Protection Act 1990 s 6(6A), 'new Part A installation', 'existing Part A installation', 'new Part A mobile plant', 'existing Part A mobile plant', 'relevant period', 'existing Part B installation', 'existing Part B mobile plant' and 'relevant date' have the meanings given in the Pollution Prevention and Control (England and Wales) Regulations 2000, SI 2000/1973, regs 9, 10, Sch 3 (prescribed date and transitional arrangements) (now revoked by SI 2007/3538) (see PARA 186 note 2; and PARA 662 et seq): Environmental Protection Act 1990 s 6(6B) (as so added).

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163. Applications for authorisations.

An application to the enforcing authority¹ for an authorisation² must contain such information, and be made in such manner, as may be prescribed in regulations made by the Secretary of State³. An application to the enforcing authority for an authorisation must also, unless regulations made by the Secretary of State exempt applications of that class, be advertised in such manner as may be prescribed in regulations so made⁴. The enforcing authority may, by notice in writing to the applicant, require him to furnish such further information specified in the notice, within the period so specified, as the authority may require for the purpose of determining the application⁵. If a person fails to furnish any information so required within the period specified, the enforcing authority may refuse to proceed with the application⁶.

1 As to the meaning of 'enforcing authority' see PARA 161 note 14.

2 As to the meaning of 'authorisation' see PARA 159 note 3.

3 Environmental Protection Act 1990 s 6(8), Sch 1 para 1(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. The Environmental Protection (Applications, Appeals and Registers) Regulations 1991, SI 1991/507, reg 2 (amended by SI 1996/667) was made but those regulations have been revoked and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARA 662 et seq. Regulations under these provisions may make different provision for different classes of applications: Environmental Protection Act 1990 Sch 1 para 1(5).

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

4 Environmental Protection Act 1990 Sch 1 para 1(2). The Environmental Protection (Applications, Appeals and Registers) Regulations 1991, SI 1991/507, regs 5-7 (amended by SI 1996/667; SI 1996/2678) were made under these provisions but they have been revoked and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARA 662 et seq.

5 Environmental Protection Act 1990 Sch 1 para 1(3).

6 Environmental Protection Act 1990 Sch 1 para 1(4).

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164. Determination of applications.

The enforcing authority¹ must give notice of any application for an authorisation², enclosing a copy of the application, to the persons who are prescribed or directed to be consulted and must do so within the specified period for notification³. The Secretary of State may, by regulations, exempt any class of application from the requirements of this provision or exclude any class of information contained in applications for authorisations from those requirements, in all cases or as respects specified classes only of persons to be consulted⁴. Any representations made by the persons so consulted within the period allowed must be considered by the enforcing authority in determining the application⁵. Any representations made by any other persons within the period allowed must also be considered by the enforcing authority in determining the application⁶. The period allowed for making representations is:

- 110 (1) in the case of persons prescribed or directed to be consulted, the period of 28 days beginning with the date on which notice of the application was given⁷; and
- 111 (2) in the case of other persons, the period of 28 days beginning with the date on which the making of the application was advertised⁸.

The Secretary of State may give directions to the enforcing authority requiring that any particular application or any class of applications for an authorisation must be transmitted to him for determination pending a further direction⁹. The enforcing authority must inform the applicant of the fact that his application is being transmitted to the Secretary of State¹⁰. Where an application for an authorisation is so referred to him the Secretary of State may:

- 112 (a) cause a local inquiry to be held in relation to the application¹¹; or
- 113 (b) afford the applicant and the authority concerned an opportunity of appearing before and being heard by a person appointed by the Secretary of State¹².

The Secretary of State must exercise one of the powers under this provision in any case where, in the manner prescribed by regulations made by him, a request is made to be heard with respect to the application by the applicant or the enforcing authority concerned¹³. The Secretary of State must, on determining any application transferred to him, give to the enforcing authority such a direction as he thinks fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the authorisation¹⁴.

The Secretary of State may give the enforcing authority a direction with respect to any particular application or any class of applications for an authorisation requiring the authority not to determine or not to proceed with the application or applications of that class until the expiry of any such period as may be specified in the direction, or until directed by the Secretary of State that they may do so, as the case may be¹⁵.

The enforcing authority must determine an application for an authorisation within the period of four months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant¹⁶. If the enforcing authority fails to determine an application for an authorisation within the period allowed by or under this provision the application must, if the applicant notifies the authority in writing that he treats the failure as such, be deemed to have been refused at the end of that period¹⁷.

1 As to the meaning of 'enforcing authority' see PARA 161 note 14.

2 As to the meaning of 'authorisation' see PARA 159 note 3.

3 Environmental Protection Act 1990 s 6(8), Sch 1 para 2(1). This is expressed to be subject to Sch 1 para 2(2) (see the text and note 4). For these purposes: (1) persons are prescribed to be consulted on any description of application for an authorisation if they are persons specified for the purposes of applications of that description in regulations made by the Secretary of State; (2) persons are directed to be consulted on any particular application if the Secretary of State specifies them in a direction given to the enforcing authority; and (3) the 'specified period for notification' is the period specified in the regulations or in the direction: Sch 1 para 2(4). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. The Environmental Protection (Applications, Appeals and Registers) Regulations 1991, SI 1991/507, regs 4, 6, 6A, 7 (reg 4 amended by the Countryside and Rights of Way Act 2000 s 73(2); SI 1996/667; SI 1996/2678; SI 2000/656; and the Environmental Protection (Applications, Appeals and Registers) Regulations 1991, SI 1991/507, reg 6A added by SI 1996/2678) were made but the regulations have been revoked and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARA 662 et seq.

As to the prospective repeal and replacement of the Environmental Protection Act 1990 Pt I (ss 1-28) see PARA 159 note 2.

4 Environmental Protection Act 1990 Sch 1 para 2(2).

5 Environmental Protection Act 1990 Sch 1 para 2(3).

6 Environmental Protection Act 1990 Sch 1 para 2(5).

7 Environmental Protection Act 1990 Sch 1 para 2(6)(a).

8 Environmental Protection Act 1990 Sch 1 para 2(6)(b). As to the requirement for advertisement see PARA 163. The Secretary of State may by order substitute for the period for the time being specified in head (1) or head (2) in the text, such other period as he considers appropriate: Sch 1 para 2(7). At the date at which this volume states the law no such order had been made.

9 Environmental Protection Act 1990 Sch 1 para 3(1). As to further directions see Sch 1 para 3(5); and the text and note 14.

10 Environmental Protection Act 1990 Sch 1 para 3(2).

11 Environmental Protection Act 1990 Sch 1 para 3(3)(a).

12 Environmental Protection Act 1990 Sch 1 para 3(3)(b).

13 Environmental Protection Act 1990 Sch 1 para 3(3) (amended by the Environment Act 1995 Sch 22 para 93(2)). The Environmental Protection (Applications, Appeals and Registers) Regulations 1991, SI 1991/507, reg 8 was made but the regulations have been revoked and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARA 662 et seq. The provisions of the Local Government Act 1972 s 250(2)-(5), without prejudice to the generality of s 250(1), apply to inquiries in pursuance of the Environmental Protection Act 1990 Sch 1 para 3(3) as they apply to inquiries in pursuance of the Local Government Act 1972 s 250 and as if the reference to a local authority in s 250(4) included a reference to the enforcing authority: Environmental Protection Act 1990 Sch 1 para 3(4). See further **LOCAL GOVERNMENT** vol 69 (2009) PARA 105.

14 Environmental Protection Act 1990 Sch 1 para 3(5). As to conditions of authorisations see PARA 165.

15 Environmental Protection Act 1990 Sch 1 para 4.

16 Environmental Protection Act 1990 Sch 1 para 5(1). This is expressed to apply except in a case where an application has been referred to the Secretary of State under Sch 1 para 3, and subject to Sch 1 para 5(3). The Secretary of State may by order substitute for the period for the time being specified in Sch 1 para 5(1) such other period as he considers appropriate, and different periods may be substituted for different classes of application: Sch 1 para 5(3). As to the order that has been made see the Environmental Protection (Authorisation of Processes) (Determination Periods) Order 1991, SI 1991/513 (amended by SI 1994/2847).

17 Environmental Protection Act 1990 Sch 1 para 5(2).

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165. Conditions of authorisations.

There is implied in every authorisation¹ a general condition² that, in carrying on the process to which the authorisation applies, the person carrying it on must use the best available techniques not entailing excessive cost³:

- 114 (1) for preventing the release⁴ of substances⁵ prescribed for any environmental medium⁶ into that medium or, where that is not practicable by such means, for reducing the release of such substances to a minimum and for rendering harmless⁷ any such substances which are so released⁸; and
- 115 (2) for rendering harmless any other substances which might cause harm if released into any environmental medium⁹.

There must be included in an authorisation:

- 116 (a) subject to head (b) below, such specific conditions as the enforcing authority¹⁰ considers appropriate, when taken with the general condition, for achieving the objectives specified in heads (i) to (iv) below¹¹;
- 117 (b) such conditions as are specified in directions given by the Secretary of State¹²; and
- 118 (c) such other conditions (if any) as appear to the enforcing authority to be appropriate¹³.

No conditions may, however, be imposed for the purpose only of securing the health of persons at work¹⁴.

The objectives referred to in head (a) above are:

- 119 (i) ensuring that, in carrying on a prescribed process¹⁵, the best available techniques not entailing excessive cost will be used¹⁶;
- 3
- 3. (A) for preventing the release of substances prescribed for any environmental medium into that medium or, where that is not practicable by such means, for reducing the release of such substances to a minimum and for rendering harmless any such substances which are so released¹⁷; and
- 4. (B) for rendering harmless any other substances which might cause harm if released into any environmental medium¹⁸;
- 4
- 120 (ii) compliance with any directions by the Secretary of State given for the implementation of any obligations of the United Kingdom under the Community treaties or international law relating to environmental protection¹⁹;
- 121 (iii) compliance with any limits or requirements and achievement of any quality standards or quality objectives prescribed by the Secretary of State under any of the relevant enactments²⁰;
- 122 (iv) compliance with any requirements applicable to the grant of authorisations specified by or under a plan made by the Secretary of State²¹.

Where the process is one designated for central control, and is likely to involve the release of substances into more than one environmental medium, the objectives referred to above²² must include the objective of ensuring that the best available techniques not entailing excessive cost will be used for minimising the pollution which may be caused to the environment taken as a whole by the releases, having regard to the best practicable environmental option available as respects the substances which may be released²³.

Except as respects the general condition, the Secretary of State may give directions to the enforcing authorities as to the conditions which are, or are not, to be included in all authorisations, in authorisations of any specified description, or in any particular authorisation²⁴.

An authorisation for carrying on a prescribed process may²⁵ include conditions:

- 123 (aa) imposing limits on the amount or composition of any substance produced by or utilised in the process in any period²⁶; and
- 124 (bb) requiring advance notification of any proposed change in the manner of carrying on the process²⁷.

No condition may at any time be attached to an authorisation so as to regulate the final disposal by deposit in or on land of controlled waste²⁸, nor may any condition apply to such a disposal²⁹. Where any of the activities comprising a prescribed process are regulated both by an authorisation granted by the enforcing authority under Part I of the Environmental Protection Act 1990 and by a registration or authorisation under the Radioactive Substances Act 1993³⁰, then, if different obligations are imposed as respects the same matter by a condition attached to the authorisation under the former enactment and a condition attached to the registration or authorisation under the latter, the condition imposed by the authorisation under the former enactment must be treated as not binding the person carrying on the process³¹.

Provision is made in connection with offences relating to documents and records required to be kept under these provisions³².

1 As to the meaning of 'authorisation' see PARA 159 note 3.

2 The obligation implied by virtue of this condition does not apply in relation to any aspect of the process in question which is regulated by a specific condition imposed under the Environmental Protection Act 1990 s 7(1) (see the text and notes 10-14): s 7(6).

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

3 Environmental Protection Act 1990 s 7(4). This is expressed to be subject to s 7(5), (6) (see notes 2, 8). References to the best available techniques not entailing excessive cost, in relation to a process, include (in addition to references to any technical means and technology) references to the number, qualifications, training and supervision of persons employed in the process and the design, construction, lay-out and maintenance of the buildings in which it is carried on: s 7(10).

As to application of best available techniques not entailing excessive cost ('BATNEEC') see *R (on the application of Thornby Farms Ltd) v Daventry District Council*, *R (on the application of Murray) v Derbyshire County Council* [2002] EWCA Civ 31, [2003] QB 503, [2002] 3 WLR 875 (emission levels set out in guidance notes were not necessarily intended to coincide with best available techniques; an investigation of what were BATNEEC did not necessarily involve worldwide inquiries as to available equipment and techniques since regard also had to be had to the resources available; a regulator had discretion as to how BATNEEC were to be achieved when determining application); *Levy v Environment Agency* [2002] EWHC 1633 (Admin), [2003] Env LR 11 (Environment Agency had to carry out a balancing exercise in determining appropriate conditions in the light of the statutory objectives found in the Environmental Protection Act 1990 s 7(4)); *R v Environment Agency and Redland Aggregates, ex p Gibson*, *R v Environment Agency and Redland Aggregates, ex p Leam*, *R v Leicestershire County Council, ex p Sellers and Petty* EA [1999] Env LR 73 (selecting appropriate conditions to meet BATNEEC did not require consideration of all process options).

4 As to the meaning of 'release' see PARA 159 note 10.

5 As to the meaning of 'substance' see PARA 159 note 9.

6 As to the meanings of 'environment' and 'environmental medium' see PARA 159 note 10.

7 As to the meanings of 'harm' and 'harmless' see PARA 160 note 16.

8 Environmental Protection Act 1990 s 7(4)(a). In the application of s 7(1)-(4) to authorisations granted by a local enforcing authority, references to the release of substances into any environmental medium are to be read as references to the release of substances into the air: s 7(5). As to the meaning of 'local enforcing authority' see PARA 161 note 14.

9 Environmental Protection Act 1990 s 7(4)(b).

10 As to the meaning of 'enforcing authority' see PARA 161 note 14.

11 Environmental Protection Act 1990 s 7(1)(a). A guidance note issued by the Secretary of State advising enforcing authorities to impose a condition preventing offensive odour escaping the process boundary is compatible with the 'best available techniques not entailing excessive cost' objective: see *R (on the application of United Kingdom Renderers Association) v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 749, [2002] All ER (D) 362 (May).

12 Environmental Protection Act 1990 s 7(1)(b). As to the power of the Secretary of State to give such directions see s 7(3); and the text and note 24. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. See *R (on the application of United Kingdom Renderers Association) v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 749, [2002] All ER (D) 362 (May); and note 11.

13 Environmental Protection Act 1990 s 7(1)(c). Where a condition (in a landfill permit) referred to levels of pollution 'as perceived by an authorised officer', the court was not required to convict on being satisfied that an authorised officer honestly perceived the relevant facts; the court had to form its own view on the evidence presented to it and determine whether the condition has been breached: *Environment Agency v Biffa Waste Services Ltd* [2006] EWHC 3495 (Admin), [2006] All ER (D) 155 (Dec), (2006) Times, 20 December.

14 Environmental Protection Act 1990 s 7(1). This provision refers to the health of persons at work within the meaning of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54): see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 420 et seq.

15 As to the meanings of 'prescribed process' and 'process' see PARA 159.

16 Environmental Protection Act 1990 s 7(2)(a).

17 Environmental Protection Act 1990 s 7(2)(a)(i). See *R (on the application of Thornby Farms Ltd) v Daventry District Council*, *R (on the application of Murray) v Derbyshire County Council* [2002] EWCA Civ 31, [2003] QB 503, [2002] 3 WLR 875; *R (on the application of United Kingdom Renderers Association) v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 749, [2002] All ER (D) 362 (May); and notes 3, 11.

18 Environmental Protection Act 1990 s 7(2)(a)(ii).

19 Environmental Protection Act 1990 s 7(2)(b). As to the meaning of 'United Kingdom' see PARA 1 note 2.

20 Environmental Protection Act 1990 s 7(2)(c). For these purposes, the 'relevant enactments' are any enactments or instruments contained in or made for the time being under: (1) the Clean Air Act 1968 s 2 (repealed); (2) the European Communities Act 1972 s 2; (3) the Health and Safety at Work etc Act 1974 Pt I (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 420 et seq); (4) the Control of Pollution Act 1974 Pt II (repealed), Pt III (ss 57-74) or Pt IV (repealed); (5) the Water Resources Act 1991 (see **WATER AND WATERWAYS**); (6) the Environmental Protection Act 1990 s 3 (prospectively repealed) (see PARA 160); and (7) the Environment Act 1995 s 87 (see PARA 200); Environmental Protection Act 1990 s 7(12) (amended by the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 56(2); and the Environment Act 1995 Sch 22 para 49(2)).

21 Environmental Protection Act 1990 s 7(2)(d). As to such requirements see s 3(5); and PARA 160. It is the duty of enforcing authorities to have regard to any guidance issued to them by the Secretary of State for the purposes of the application of s 7(2) and s 7(7) (see the text and note 23) as to the techniques and environmental options that are appropriate for any description of prescribed process: s 7(11).

22 Ie in heads (i)-(iv) in the text.

- 23 Environmental Protection Act 1990 s 7(7). See note 21.
- 24 Environmental Protection Act 1990 s 7(3).
- 25 Ie without prejudice to the generality of the Environmental Protection Act 1990 s 7(1): see the text and notes 10-14.
- 26 Environmental Protection Act 1990 s 7(8)(a).
- 27 Environmental Protection Act 1990 s 7(8)(b).
- 28 Ie within the meaning of the Environmental Protection Act 1990 Pt II (ss 29-78): see PARA 624.
- 29 Environmental Protection Act 1990 s 28(1) (amended by the Environment Act 1995 Sch 22 para 61(1), Sch 24).
- 30 See **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1357 et seq.
- 31 Environmental Protection Act 1990 s 28(2) (amended by the Radioactive Substances Act 1993 Sch 4 para 6).
- 32 See PARA 181.

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166. Fees and charges for authorisations.

There must be charged by and paid to the local enforcing authority¹ such fees and charges as may be prescribed from time to time by a scheme (whether by being specified in or made calculable under the scheme)². The Secretary of State³ may, with the approval of the Treasury⁴, make, and from time to time revise, a scheme⁵ prescribing:

- 125 (1) fees payable in respect of applications for authorisations⁶;
- 126 (2) fees payable by persons holding authorisations in respect of, or of applications for, the variation of authorisations⁷; and
- 127 (3) charges payable by such persons in respect of the subsistence of their authorisations⁸.

A scheme may in particular:

- 128 (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities⁹;
- 129 (b) allow for reduced fees or charges to be payable in respect of authorisations for a number of prescribed processes¹⁰ carried on by the same person¹¹;
- 130 (c) provide for the times at which and the manner in which the payments required by the scheme are to be made¹²; and
- 131 (d) make such incidental, supplementary and transitional provision as appears to the Secretary of State to be appropriate¹³.

In framing a scheme, the Secretary of State must, so far as practicable, secure that the fees and charges payable under the scheme are sufficient, taking one financial year with another, to cover the relevant expenditure attributable to authorisations¹⁴. If it appears to the local enforcing authority that the holder of an authorisation has failed to pay a charge due in consideration of the subsistence of the authorisation, it may, by notice in writing served on the holder, revoke the authorisation¹⁵.

1 As to the meaning of 'local enforcing authority' see PARA 161 note 14.

2 Environmental Protection Act 1990 s 8(1) (amended by the Environment Act 1995 Sch 22 para 50(2)).

As to the prospective repeal and replacement of the Environmental Protection Act 1990 Pt I (ss 1-28) see PARA 159 note 2.

3 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

5 Environmental Protection Act 1990 s 8(2). On making or revising such a scheme, the Secretary of State must lay a copy of the scheme or of the alterations made in it or, if he considers it more appropriate, the scheme as revised, before each House of Parliament: s 8(3).

6 Environmental Protection Act 1990 s 8(2)(a). As to the meaning of 'authorisation' see PARA 159 note 3.

- 7 Environmental Protection Act 1990 s 8(2)(b). As to the variation of authorisations and conditions see PARA 168 et seq.
- 8 Environmental Protection Act 1990 s 8(2)(c).
- 9 Environmental Protection Act 1990 s 8(5)(a).
- 10 As to the meanings of 'prescribed process' and 'process' see PARA 159.
- 11 Environmental Protection Act 1990 s 8(5)(b).
- 12 Environmental Protection Act 1990 s 8(5)(c).
- 13 Environmental Protection Act 1990 s 8(5)(d).
- 14 Environmental Protection Act 1990 s 8(6). The 'relevant expenditure attributable to authorisations' is the expenditure incurred by the local enforcing authorities in exercising their functions under Pt I (prospectively repealed) in relation to authorisations, together with the expenditure incurred by the Environment Agency in exercising, in relation to authorisations granted by local enforcing authorities or the prescribed processes to which such authorisations relate, such of its functions as are specified in the scheme: s 8(7) (amended by the Environment Act 1995 Sch 22 para 50(4); and the Prevention and Control of Pollution Act 1999 Sch 2). As to the Environment Agency see PARA 68 et seq.
- 15 Environmental Protection Act 1990 s 8(8) (amended by the Environment Act 1995 Sch 22 para 50(5)).

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167. Transfer of authorisations.

An authorisation¹ for the carrying on of any prescribed process² may be transferred by the holder to a person who proposes to carry on the process in the holder's place³. Where an authorisation is transferred, the person to whom it is transferred must notify the enforcing authority⁴ in writing of that fact not later than the end of the period of 21 days beginning with the date of the transfer⁵. An authorisation which is transferred has effect on and after the date of the transfer as if it had been granted to that person⁶, subject to the same conditions as were attached to it immediately before that date⁷.

1 As to the meaning of 'authorisation' see PARA 159 note 3.

2 As to the meanings of 'prescribed process' and 'process' see PARA 159.

3 Environmental Protection Act 1990 s 9(1). As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

4 As to the meaning of 'enforcing authority' see PARA 161 note 14.

5 Environmental Protection Act 1990 s 9(2). Contravention of this provision is an offence: see PARA 181.

6 Ie granted under the Environmental Protection Act 1990 s 6: see PARA 162.

7 Environmental Protection Act 1990 s 9(3). As to conditions of authorisations see PARA 165.

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168. Variation of authorisations by enforcing authority.

The enforcing authority¹ may at any time, subject to certain requirements², vary³ an authorisation, and must do so if it appears to the authority at that time that the relevant statutory provision⁴ requires conditions to be included which are different from the subsisting conditions⁵. Where the enforcing authority has decided so to vary an authorisation, the authority must notify the holder of the authorisation and serve a variation notice on him⁶. An enforcing authority which has served a variation notice may vary that notice by serving on the holder of the authorisation in question a further notice⁷:

- 132 (1) specifying the variations which the enforcing authority has decided to make to the variation notice⁸; and
- 133 (2) specifying the date or dates on which the variations specified in the variation notice, as varied by the further notice, are to take effect⁹.

A variation notice must also:

- 134 (a) require the holder of the authorisation, within such period as may be specified in the notice, to notify the authority what action (if any) he proposes to take to ensure that the process¹⁰ is carried on in accordance with the authorisation as varied by the notice¹¹; and
- 135 (b) require the holder to pay, within such period as may be specified in the notice:

5

- 5. (i) in a case where the enforcing authority is the Environment Agency, the charge (if any) prescribed¹² for the purpose by a charging scheme¹³; or
- 6. (ii) in any other case, the fee (if any) prescribed by a scheme¹⁴.

6

Where in the opinion of the enforcing authority any action to be taken by the holder of an authorisation in consequence of a variation notice will involve a substantial change¹⁵ in the manner in which the process is being carried on, the enforcing authority must notify the holder of its opinion¹⁶.

The Secretary of State may, if he thinks fit in relation to authorisations of any description or particular authorisations, direct the enforcing authorities¹⁷:

- 136 (A) to exercise their powers under these provisions, or to do so in such circumstances as may be specified in the directions, in such manner as may be so specified¹⁸; or
- 137 (B) not to exercise those powers, or not to do so in such circumstances or such manner as may be so specified¹⁹.

1 As to the meaning of 'enforcing authority' see PARA 161 note 14.

2 le the requirements of the Environmental Protection Act 1990 s 7 (see PARA 165) and, in cases to which they apply, the requirements of Sch 1 Pt II (see PARAS 170-172). As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

See *R v Environment Agency and Redland Aggregates, ex p Gibson, R v Environment Agency and Redland Aggregates, ex p Leam, R v Leicestershire County Council, ex p Sellers and Petty EA* [1999] Env LR 73 (power to vary an authorisation involved the same consideration of BATNEEC as in full applications) (see PARA 165).

3 In the Environmental Protection Act 1990 s 10 and s 11 (see PARA 169), 'vary' means: (1) in relation to the subsisting conditions or other provisions of an authorisation, adding to them or varying or rescinding any of them; and (2) in relation to a variation notice, adding to, or varying or rescinding the notice or any of its contents; and 'variation' must be construed accordingly: s 10(8) (amended by the Environment Act 1995 Sch 22 para 51(5)). As to the meaning of 'authorisation' see PARA 159 note 3. As to conditions of authorisations see PARA 165. In the Environmental Protection Act 1990 Pt I (prospectively repealed), a 'variation notice' is a notice served by the enforcing authority on the holder of an authorisation: (a) specifying variations of the authorisation which the enforcing authority has decided to make; and (b) specifying the date or dates on which the variations are to take effect; and, unless the notice is withdrawn or is varied under s 10(3A) (see the text and notes 7-9), the variations specified in a variation notice take effect on the date or dates so specified: s 10(3) (amended by the Environment Act 1995 Sch 22 para 51(2)).

4 le the Environmental Protection Act 1990 s 7: see PARA 165.

5 Environmental Protection Act 1990 s 10(1).

6 Environmental Protection Act 1990 s 10(2).

7 Environmental Protection Act 1990 s 10(3A) (added by the Environment Act 1995 Sch 22 para 51(3)). Any reference in the Environmental Protection Act 1990 Pt I (prospectively repealed) to a variation notice, or to a variation notice served under s 10(2), includes a reference to such a notice as varied by a further notice: s 10(3A) (as so added).

8 Environmental Protection Act 1990 s 10(3A)(a) (as added: see note 7).

9 Environmental Protection Act 1990 s 10(3A)(b) (as added: see note 7).

10 As to the meanings of 'prescribed process' and 'process' see PARA 159.

11 Environmental Protection Act 1990 s 10(4)(a).

12 In the Environmental Protection Act 1990 s 10 and s 11 (see PARA 169), 'prescribed' means prescribed in regulations made by the Secretary of State: s 10(8). See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARAS 163, 662 et seq. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

13 le under the Environment Act 1995 s 41 (see PARA 97): Environmental Protection Act 1990 s 10(4)(b)(i) (s 10(4)(b) substituted by the Environment Act 1995 Sch 22 para 51(4)).

14 le under the Environmental Protection Act 1990 s 8 (see PARA 166): s 10(4)(b)(ii) (as substituted: see note 13).

15 In the Environmental Protection Act 1990 s 10 and s 11 (see PARA 169), a 'substantial change', in relation to a prescribed process being carried on under an authorisation, means a substantial change in the substances released from the process or in the amount or any other characteristic of any substance so released; and the Secretary of State may give directions to the enforcing authorities as to what does or does not constitute a substantial change in relation to processes generally, any description of process or any particular process: s 10(7). As to the meaning of 'released' see PARA 159 note 10; and as to the meaning of 'substance' see PARA 159 note 9.

16 Environmental Protection Act 1990 s 10(5).

17 Environmental Protection Act 1990 s 10(6).

18 Environmental Protection Act 1990 s 10(6)(a).

19 Environmental Protection Act 1990 s 10(6)(b). The Secretary of State has a corresponding power of direction in respect of the powers of the enforcing authorities to vary authorisations under s 11 (see PARA 169): see s 10(6).

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169. Effect of changes to prescribed processes on authorisation.

A person carrying on a prescribed process¹ under an authorisation² who wishes to make a relevant change³ in the process may at any time:

- 138 (1) notify the enforcing authority⁴ in the prescribed⁵ form of that fact⁶; and
- 139 (2) request the enforcing authority to make a determination, in relation to the proposed change, of the matters mentioned in heads (a) to (d) below⁷.

A person making a request under head (2) above must furnish the enforcing authority with such information as may be prescribed or as the authority may by notice require⁸. On receiving such a request the enforcing authority must determine:

- 140 (a) whether the proposed change would involve a breach of any condition⁹ of the authorisation¹⁰;
- 141 (b) if it would not involve such a breach, whether the authority would be likely to vary¹¹ the conditions of the authorisation as a result of the change¹²;
- 142 (c) if it would involve such a breach, whether the authority would consider varying the conditions of the authorisation so that the change may be made¹³; and
- 143 (d) whether the change would involve a substantial change¹⁴ in the manner in which the process is being carried on¹⁵,

and the enforcing authority must notify the holder of the authorisation of its determination of those matters¹⁶.

Where the enforcing authority has determined that the proposed change would not involve a substantial change, but has also determined under head (b) or head (c) above that the change would lead to or require the variation of the conditions of the authorisation¹⁷, then:

- 144 (i) the enforcing authority must (either on notifying its determination under that provision or on a subsequent occasion) notify the holder of the authorisation of the variations which the authority is likely to consider making¹⁸; and
- 145 (ii) the holder may apply in the prescribed form to the enforcing authority for the variation of the conditions of the authorisation so that he may make the proposed change¹⁹.

Where the enforcing authority has determined that a proposed change would involve a substantial change that would lead to or require the variation of the conditions of the authorisation, then the authority must (either on notifying its determination or on a subsequent occasion) notify the holder of the authorisation of the variations which the authority is likely to consider making, and the holder of the authorisation must, if he wishes to proceed with the change, apply in the prescribed form to the enforcing authority for the variation of the conditions of the authorisation²⁰.

The holder of an authorisation may at any time (unless he is carrying on a prescribed process under the authorisation and wishes to make a relevant change in the process) apply to the

enforcing authority in the prescribed form for the variation of the conditions of the authorisation²¹. A person carrying on a process under an authorisation who wishes to make a relevant change in the process may, where it appears to him that the change will require the variation of the conditions of the authorisation, apply to the enforcing authority in the prescribed form for the variation of the conditions of the authorisation specified in the application²². A person who makes an application for the variation of the conditions of an authorisation must furnish the authority with such information as may be prescribed or as the authority may by notice require²³.

On an application for variation of the conditions of an authorisation under any of these provisions:

- 146 (A) the enforcing authority may, having fulfilled certain requirements²⁴ where necessary, as it thinks fit either refuse the application or²⁵ vary the conditions or, in the case of certain applications²⁶ treat the application as a request for a determination²⁷; and
- 147 (B) if the enforcing authority decides to vary the conditions, it must serve a variation notice on the holder of the authorisation²⁸.

Any application to the enforcing authority must be accompanied:

- 148 (aa) in a case where the enforcing authority is the Environment Agency²⁹, by the charge (if any) prescribed for the purpose by a charging scheme³⁰; or
- 149 (bb) in any other case, by the fee (if any) prescribed by a scheme³¹.

These provisions apply to any provision other than a condition which is contained in an authorisation as they apply to a condition with the modification that any reference to the breach of a condition must be read as a reference to acting outside the scope of the authorisation³².

1 As to the meanings of 'prescribed process' and 'process' see PARA 159.

2 As to the meaning of 'authorisation' see PARA 159 note 3.

3 For the purposes of the Environmental Protection Act 1990 s 11, a relevant change in a prescribed process is a change in the manner of carrying on the process which is capable of altering the substances released from the process or of affecting the amount or any other characteristic of any substance so released: s 11(11). As to the meaning of 'substance' see PARA 159 note 9; and as to the meaning of 'released' see PARA 159 note 10.

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

4 As to the meaning of 'enforcing authority' see PARA 161 note 14.

5 As to the meaning of 'prescribed' for these purposes see PARA 168 note 12.

6 Environmental Protection Act 1990 s 11(1)(a).

7 Environmental Protection Act 1990 s 11(1)(b).

8 Environmental Protection Act 1990 s 11(1).

9 As to conditions of authorisations see PARA 165.

10 Environmental Protection Act 1990 s 11(2)(a).

11 As to the meanings of 'vary' and 'variation' for these purposes see PARA 168 note 3.

12 Environmental Protection Act 1990 s 11(2)(b).

- 13 Environmental Protection Act 1990 s 11(2)(c).
- 14 As to the meaning of 'substantial change' see PARA 168 note 15.
- 15 Environmental Protection Act 1990 s 11(2)(d).
- 16 Environmental Protection Act 1990 s 11(2).
- 17 Environmental Protection Act 1990 s 11(3).
- 18 Environmental Protection Act 1990 s 11(3)(a).
- 19 Environmental Protection Act 1990 s 11(3)(b).
- 20 Environmental Protection Act 1990 s 11(4).
- 21 Environmental Protection Act 1990 s 11(5).
- 22 Environmental Protection Act 1990 s 11(6).
- 23 Environmental Protection Act 1990 s 11(7).
- 24 Ie the requirements of the Environmental Protection Act 1990 Sch 1 Pt II: see PARAS 170-172.
- 25 Ie subject to the requirements of the Environmental Protection Act 1990 s 7: see PARA 165.
- 26 Ie an application under the Environmental Protection Act 1990 s 11(6): see the text and note 22.
- 27 Environmental Protection Act 1990 s 11(8)(a).
- 28 Environmental Protection Act 1990 s 11(8)(b).
- 29 As to the Environment Agency see PARA 68 et seq.
- 30 Ie under the Environment Act 1995 s 41 (see PARA 97): Environmental Protection Act 1990 s 11(9)(a) (s 11(9) substituted by the Environment Act 1995 Sch 22 para 52).
- 31 Ie under the Environmental Protection Act 1990 s 8 (see PARA 166): s 11(9)(b) (as substituted: see note 30).
- 32 Environmental Protection Act 1990 s 11(10).

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170. Supplementary provisions relating to variations of authorisations.

Where an enforcing authority¹ has decided to vary² an authorisation³ and is of the opinion that any action to be taken by the holder of the authorisation in consequence of the variation⁴ will involve a substantial change⁵ in the manner in which the process⁶ is being carried on⁷, the enforcing authority must give notice of the action to be taken by the holder of the authorisation to the persons who are prescribed or directed to be consulted and must do so within the specified period for notification; and the holder must advertise the action in the manner prescribed in regulations made by the Secretary of State⁸. The Secretary of State may, by regulations, exempt any class of variation from all or any of the requirements of these provisions or exclude any class of information relating to action to be taken by holders of authorisations from all or any of those requirements, in all cases or as respects specified classes only of persons to be consulted⁹. Any representations made by the persons so consulted within the period allowed must be considered by the enforcing authority in taking its decision¹⁰. Any representations made by any other persons within the period allowed must also be considered by the enforcing authority in taking its decision¹¹. The period allowed for making representations is: (1) in the case of persons prescribed or directed to be consulted, the period of 28 days beginning with the date on which notice was given; and (2) in the case of other persons, the period of 28 days beginning with the date of the advertisement¹².

1 As to the meaning of 'enforcing authority' see PARA 161 note 14.

2 As to the meaning of 'vary' see PARA 168 note 3.

3 As to the meaning of 'authorisation' see PARA 159 note 3. As to variation of authorisations see PARA 168.

4 As to the meaning of 'variation' see PARA 168 note 3.

5 As to the meaning of 'substantial change' see PARA 168 note 15.

6 As to the meanings of 'prescribed process' and 'process' see PARA 159.

7 Environmental Protection Act 1990 s 6(8), Sch 1 para 6(1) (amended by the Environment Act 1995 Sch 22 para 93(3)). The requirements of the Environmental Protection Act 1990 Sch 1 para 6 do not, however, apply in relation to any variations of an authorisation which an enforcing authority has decided to make in consequence of representations made in accordance with Sch 1 para 6 and which are specified by way of variation of a variation notice by a further notice under s 10(3A) (see PARA 168); Sch 1 para 6(1A) (added by the Environment Act 1995 Sch 22 para 93(4)). As to the meaning of 'variation notice' see PARA 168 note 3.

As to the prospective repeal and replacement of the Environmental Protection Act 1990 Pt I (ss 1-28) see PARA 159 note 2.

8 Environmental Protection Act 1990 Sch 1 para 6(2). This is expressed to be subject to Sch 1 para 6(3) (see the text and note 9). For these purposes: (1) persons are prescribed to be consulted on any description of variation if they are persons specified for the purposes of variations of that description in regulations made by the Secretary of State; and (2) persons are directed to be consulted on any particular variation if the Secretary of State specifies them in a direction given to the enforcing authority; and the 'specified period for notification' is the period specified in the regulations or in the direction: Sch 1 para 6(5). The Environmental Protection (Applications, Appeals and Registers) Regulations 1991, SI 1991/507, regs 4-7 (amended by the Countryside and Rights of Way Act 2000 s 73(2); SI 1996/667; SI 1996/2678; SI 2000/656) were made but these regulations have been revoked and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARA 662 et seq. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

- 9 Environmental Protection Act 1990 Sch 1 para 6(3). See also the regulations cited in note 8.
- 10 Environmental Protection Act 1990 Sch 1 para 6(4).
- 11 Environmental Protection Act 1990 Sch 1 para 6(6).
- 12 Environmental Protection Act 1990 Sch 1 para 6(7). The Secretary of State may by order substitute for the period for the time being specified in head (1) or head (2) in the text such other period as he considers appropriate: Sch 1 para 6(8). At the date at which this volume states the law no such order had been made.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/4. INTEGRATION OF POLLUTION CONTROL/(2) INTEGRATED POLLUTION CONTROL/(ii) Authorisations/171. Applications for variation.

171. Applications for variation.

Where an application is made to an enforcing authority¹ for the variation² of an authorisation³, the enforcing authority must give notice of any such application, enclosing a copy of the application, to the persons who are prescribed or directed to be consulted, and must do so within the specified period for notification; and the holder of the authorisation must advertise the application in the manner prescribed in regulations made by the Secretary of State⁴. The Secretary of State may, by regulations, exempt any class of application from all or any of the requirements of these provisions or exclude any class of information furnished with applications for variations of authorisations from all or any of those requirements, in all cases or as respects specified classes only of persons to be consulted⁵. Any representations made by the persons so consulted within the period allowed must be considered by the enforcing authority in determining the application⁶. Any representation made by any other persons within the period allowed must also be considered by the enforcing authority in determining the application⁷. The period allowed for making representations is: (1) in the case of persons prescribed or directed to be consulted, the period of 28 days beginning with the date on which notice of the application was given; and (2) in the case of other persons, the period of 28 days beginning with the date on which the making of the application was advertised⁸.

1 As to the meaning of 'enforcing authority' see PARA 161 note 14.

2 As to the meaning of 'variation' see PARA 168 note 3.

3 I.e. an application under the Environmental Protection Act 1990 s 11(4) (see PARA 169): s 6(8), Sch 1 para 7(1). As to the meaning of 'authorisation' see PARA 159 note 3.

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

4 Environmental Protection Act 1990 Sch 1 para 7(2). This provision is expressed to be subject to Sch 1 para 7(3) (see the text and note 5). For these purposes: (1) persons are prescribed to be consulted on any description of application for a variation if they are persons specified for the purposes of applications of that description in regulations made by the Secretary of State; (2) persons are directed to be consulted on any particular application if the Secretary of State specifies them in a direction given to the enforcing authority; and (3) the 'specified period for notification' is the period specified in the regulations or in the direction: Sch 1 para 7(5). The Environmental Protection (Applications, Appeals and Registers) Regulations 1991, SI 1991/507, regs 4-7 (amended by the Countryside and Rights of Way Act 2000 s 73(2); SI 1996/667; SI 1996/2678; SI 2000/656) were made but these regulations have been revoked and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARA 662 et seq. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

5 Environmental Protection Act 1990 Sch 1 para 7(3). See also the regulations cited in note 4.

6 Environmental Protection Act 1990 Sch 1 para 7(4).

7 Environmental Protection Act 1990 Sch 1 para 7(6).

8 Environmental Protection Act 1990 Sch 1 para 7(7). The Secretary of State may by order substitute for the period for the time being specified in head (1) or head (2) in the text such other period as he considers appropriate: Sch 1 para 7(8). At the date at which this volume states the law no such order had been made.

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172. Call in of applications for variation.

The Secretary of State¹ may give directions to the enforcing authority² requiring that any particular application or any class of applications for the variation³ of an authorisation⁴ must be transmitted to him for determination pending a further direction⁵. The enforcing authority must inform the applicant of the fact that his application is being transmitted to the Secretary of State⁶. Where an application for variation is so referred to him the Secretary of State may:

- 150 (1) cause a local inquiry to be held in relation to the application⁷; or
- 151 (2) afford the applicant and the authority concerned an opportunity of appearing before and being heard by a person appointed by the Secretary of State⁸,

and the Secretary of State must exercise one of the powers under this provision in any case where, in the manner prescribed by regulations made by the Secretary of State, a request is made to be heard with respect to the application by the applicant or the enforcing authority concerned⁹. The Secretary of State must, on determining any application transferred to him, give to the enforcing authority such a direction as he thinks fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the authorisation by means of the variation notice¹⁰.

The Secretary of State may give the enforcing authority a direction with respect to any particular application or any class of applications for the variation of an authorisation requiring the authority not to determine or not to proceed with the application or applications of that class until the expiry of any such period as may be specified in the direction, or until directed by the Secretary of State that it may do so, as the case may be¹¹.

Except in a case where an application for the variation of an authorisation has been referred to the Secretary of State¹², the enforcing authority must determine an application for the variation of an authorisation within the period of four months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant¹³. If the enforcing authority fails to determine an application for the variation of an authorisation within the period allowed, the application must, if the applicant notifies the authority in writing that he treats the failure as such, be deemed to have been refused at the end of that period¹⁴.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'enforcing authority' see PARA 161 note 14.

3 As to the meaning of 'variation' see PARA 168 note 3.

4 As to the meaning of 'authorisation' see PARA 159 note 3.

5 Environmental Protection Act 1990 s 6(8), Sch 1 para 8(1) (Sch 1 paras 8-10 added by the Environment Act 1995 Sch 22 para 93(5)). As to transmission of applications to the Secretary of State see the Environmental Protection Act 1990 Sch 1 para 8(5); and the text and note 10.

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

6 Environmental Protection Act 1990 Sch 1 para 8(2) (as added: see note 5).

7 Environmental Protection Act 1990 Sch 1 para 8(3)(a) (as added: see note 5). Without prejudice to the generality of the Local Government Act 1972 s 250(1) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105), the provisions of s 250(2)-(5) apply to local inquiries or other hearings in pursuance of the Environmental Protection Act 1990 Sch 1 para 8(3) as they apply to inquiries in pursuance of the Local Government Act 1972 s 250 and as if the reference to a local authority in s 250(4) included a reference to the enforcing authority: Environmental Protection Act 1990 Sch 1 para 8(4) (as so added).

8 Environmental Protection Act 1990 Sch 1 para 8(3)(b) (as added: see note 5).

9 Environmental Protection Act 1990 Sch 1 para 8(3) (as added: see note 5). At the date at which this volume states the law no regulations had been made for these purposes.

10 Environmental Protection Act 1990 Sch 1 para 8(5) (as added: see note 5). As to the meaning of 'variation notice' see PARA 168 note 3.

11 Environmental Protection Act 1990 Sch 1 para 9 (as added: see note 5).

12 le under the Environmental Protection Act 1990 Sch 1 para 8 (see the text and notes 1-10); and subject to Sch 1 para 10(3) (see note 13).

13 Environmental Protection Act 1990 Sch 1 para 10(1) (as added: see note 5). The Secretary of State may by order substitute for the period for the time being specified in Sch 1 para 10(1) such other period as he considers appropriate; and different periods may be substituted for different classes of application: Sch 1 para 10(3) (as so added). At the date at which this volume states the law no such order had been made.

14 Environmental Protection Act 1990 Sch 1 para 10(2) (as added: see note 5).

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173. Revocation of authorisation.

The enforcing authority¹ may at any time revoke an authorisation² by notice in writing to the person holding the authorisation³. Without prejudice to the generality of this provision, the enforcing authority may revoke an authorisation where it has reason to believe that a prescribed process⁴ for which the authorisation is in force has not been carried on or not for a period of 12 months⁵. Such a revocation has effect from the date specified in the notice; and the period between the date on which the notice is served and the date so specified must not be less than 28 days⁶. The enforcing authority may, before the date on which the revocation of an authorisation takes effect, withdraw the notice or vary the date specified in it⁷. The Secretary of State⁸ may, if he thinks fit in relation to an authorisation, give to the enforcing authority directions as to whether the authority should revoke the authorisation under these provisions⁹.

1 As to the meaning of 'enforcing authority' see PARA 161 note 14.

2 As to the meaning of 'authorisation' see PARA 159 note 3.

3 Environmental Protection Act 1990 s 12(1).

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

As to an application for judicial review of the issue of a notice of revocation under s 12 on the grounds that the decision to issue was irrational and oppressive see *R v Environment Agency, ex p Petrus Oils Ltd* [1999] JPL 839, [1999] Env LR 732 (unsuccessful application).

4 As to the meanings of 'prescribed process' and 'process' see PARA 159.

5 Environmental Protection Act 1990 s 12(2).

6 Environmental Protection Act 1990 s 12(3).

7 Environmental Protection Act 1990 s 12(4).

8 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Environmental Protection Act 1990 s 12(5).

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(iii) Enforcement

174. Enforcement notices.

If the enforcing authority¹ is of the opinion that the person carrying on a prescribed process² under an authorisation³ is contravening any condition⁴ of the authorisation, or is likely to contravene any such condition, the authority may serve on him a notice (an 'enforcement notice')⁵. An enforcement notice must:

- 152 (1) state that the authority is of the said opinion⁶;
- 153 (2) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be⁷;
- 154 (3) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be⁸; and
- 155 (4) specify the period within which those steps must be taken⁹.

The Secretary of State¹⁰ may, if he thinks fit in relation to the carrying on by any person of a prescribed process, give to the enforcing authority directions as to whether the authority should exercise its powers under these provisions and as to the steps which are to be required to be taken¹¹. The enforcing authority may, as respects any enforcement notice it has issued to any person, by notice in writing served on that person, withdraw the notice¹².

Failure to comply with, or contravention of, any requirement of an enforcement notice is an offence¹³.

1 As to the meaning of 'enforcing authority' see PARA 161 note 14.

2 As to the meanings of 'prescribed process' and 'process' see PARA 159.

3 As to the meaning of 'authorisation' see PARA 159 note 3.

4 As to conditions of authorisations see PARA 165.

5 Environmental Protection Act 1990 s 13(1).

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

6 Environmental Protection Act 1990 s 13(2)(a).

7 Environmental Protection Act 1990 s 13(2)(b).

8 Environmental Protection Act 1990 s 13(2)(c).

9 Environmental Protection Act 1990 s 13(2)(d).

10 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

11 Environmental Protection Act 1990 s 13(3).

- 12 Environmental Protection Act 1990 s 13(4) (added by the Environment Act 1995 Sch 22 PARA 53).
- 13 See PARA 181.

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175. Prohibition notices.

If the enforcing authority¹ is of the opinion, as respects the carrying on of a prescribed process² under an authorisation³, that the continuing to carry it on, or the continuing to carry it on in a particular manner, involves an imminent risk of serious pollution of the environment⁴, the authority must serve a notice (a 'prohibition notice') on the person carrying on the process⁵. A prohibition notice may be served whether or not the manner of carrying on the process in question contravenes a condition⁶ of the authorisation and may relate to any aspects of the process, whether regulated by the conditions of the authorisation or not⁷. A prohibition notice must:

- 156 (1) state the authority's opinion⁸;
- 157 (2) specify the risk involved in the process⁹;
- 158 (3) specify the steps that must be taken to remove it and the period within which they must be taken¹⁰; and
- 159 (4) direct that, until the notice is withdrawn, the authorisation (wholly or to the extent specified in the notice) is to cease to have effect to authorise the carrying on of the process¹¹.

Where the direction applies to part only of the process, it may impose conditions to be observed in carrying on the part which is authorised to be carried on¹². The Secretary of State¹³ may, if he thinks fit in relation to the carrying on by any person of a prescribed process, give to the enforcing authority¹⁴ directions as to:

- 160 (a) whether the authority should perform its duties under these provisions¹⁵; and
- 161 (b) the matters to be specified in any prohibition notice which the authority is directed to issue¹⁶.

The enforcing authority must, as respects any prohibition notice it has issued to any person, by notice in writing served on that person, withdraw the notice when it is satisfied that the steps required by the notice have been taken¹⁷.

Failure to comply with, or contravention of, any requirement of a prohibition notice is an offence¹⁸.

1 As to the meaning of 'enforcing authority' see PARA 161 note 14.

2 As to the meanings of 'prescribed process' and 'process' see PARA 159.

3 As to the meaning of 'authorisation' see PARA 159 note 3.

4 As to the meaning of 'pollution of the environment' see PARA 160 note 16.

5 Environmental Protection Act 1990 s 14(1).

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

6 As to conditions of authorisations see PARA 165.

- 7 Environmental Protection Act 1990 s 14(2).
- 8 Environmental Protection Act 1990 s 14(3)(a).
- 9 Environmental Protection Act 1990 s 14(3)(b).
- 10 Environmental Protection Act 1990 s 14(3)(c).
- 11 Environmental Protection Act 1990 s 14(3)(d).
- 12 Environmental Protection Act 1990 s 14(3).
- 13 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.
- 14 Environmental Protection Act 1990 s 14(4).
- 15 Environmental Protection Act 1990 s 14(4)(a).
- 16 Environmental Protection Act 1990 s 14(4)(b).
- 17 Environmental Protection Act 1990 s 14(5).
- 18 See PARA 181.

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(iv) Appeals

176. Appeals as respects authorisations and against variation, enforcement and prohibition notices.

The following persons, namely:

- 162 (1) a person who has been refused the grant of an authorisation¹;
- 163 (2) a person who is aggrieved by the conditions attached², to his authorisation³;
- 164 (3) a person who has been refused a variation of an authorisation⁴; and
- 165 (4) a person whose authorisation has been revoked⁵,

may appeal against the decision of the enforcing authority⁶ to the Secretary of State⁷ (except where the decision implements a direction given by him)⁸.

A person on whom a variation notice⁹, an enforcement notice¹⁰ or a prohibition notice¹¹ is served may appeal against the notice to the Secretary of State (except where the notice implements a direction given by him)¹².

An appeal under these provisions must, if and to the extent required by regulations¹³, be advertised in such manner as may be prescribed by such regulations¹⁴. Before determining an appeal, the Secretary of State may, if he thinks fit:

- 166 (a) cause the appeal to take or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private)¹⁵; or
- 167 (b) cause a local inquiry to be held¹⁶.

The Secretary of State must act as mentioned in head (a) or head (b) above if a request is made by either party to the appeal to be heard with respect to the appeal¹⁷. On determining an appeal against a decision of an enforcing authority, the Secretary of State:

- 168 (i) may affirm the decision¹⁸;
- 169 (ii) where the decision was a refusal to grant an authorisation or a variation of an authorisation, may direct the enforcing authority to grant the authorisation or to vary the authorisation, as the case may be¹⁹;
- 170 (iii) where the decision was as to the conditions attached to an authorisation, may quash all or any of the conditions of the authorisation²⁰;
- 171 (iv) where the decision was to revoke an authorisation, may quash the decision²¹,

and where he exercises any of the powers in head (ii), (iii) or (iv) above, he may give directions as to the conditions to be attached to the authorisation²².

¹ Environmental Protection Act 1990 s 15(1)(a). As to authorisations generally see s 6; and PARA 162. As to the meaning of 'authorisation' see PARA 159 note 3.

2 As to conditions of authorisations see PARA 165. The reference in the text is a reference to conditions attached under any provision of the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed). As to the prospective repeal and replacement of Pt I see PARA 159 note 2.

As to the imposition of conditions on appeal which would mean that the operator could not continue operating see *Smith Bros (Hyde) Ltd v Secretary of State for the Environment* (21 June 1996, unreported), CA.

3 Environmental Protection Act 1990 s 15(1)(b).

4 Environmental Protection Act 1990 s 15(1)(c). As to application for a variation see s 11; and PARA 169.

5 Environmental Protection Act 1990 s 15(1)(d). As to revocation of an authorisation see s 12; and PARA 173. Where an appeal is brought against the revocation of an authorisation, the revocation does not take effect pending the final determination or withdrawal of the appeal: s 15(8).

6 As to the meaning of 'enforcing authority' see PARA 161 note 14.

7 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

8 Environmental Protection Act 1990 s 15(1). The provisions of s 15 are subject to the Environment Act 1995 s 114 (see PARA 65): Environmental Protection Act 1990 s 15(3) (substituted by the Environment Act 1995 Sch 22 para 54(3)).

9 As to the meaning of 'variation notice' see PARA 168 note 3.

10 As to the meaning of 'enforcement notice' see PARA 174.

11 As to the meaning of 'prohibition notice' see PARA 175.

12 Environmental Protection Act 1990 s 15(2) (amended by the Environment Act 1995 Sch 22 para 54(2)). On the determination of an appeal under the Environmental Protection Act 1990 s 15(2), the Secretary of State may either quash or affirm the notice and, if he affirms it, may do so either in its original form or with such modifications as he may in the circumstances think fit: s 15(7). Where an appeal is brought under s 15(2) against a notice, the bringing of the appeal will not have the effect of suspending the operation of the notice: s 15(9).

13 Provision may be made by the Secretary of State by regulations with respect to appeals under the above provisions and in particular:

56 (1) as to the period within which and the manner in which appeals are to be brought; and

57 (2) as to the manner in which appeals are to be considered,

and any such regulations may make different provision for different cases or different circumstances: Environmental Protection Act 1990 s 15(10) (amended by the Environment Act 1995 Sch 22 para 54(5)). The Environmental Protection (Applications, Appeals and Registers) Regulations 1991, SI 1991/507, regs 9-14 (amended by SI 1996/667) were made but the regulations have been revoked and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARA 662 et seq.

14 Environmental Protection Act 1990 s 15(4). See also the regulations mentioned in note 13.

15 Environmental Protection Act 1990 s 15(5)(a) (s 15(5) substituted by the Environment Act 1995 Sch 22 para 54(4)).

16 Environmental Protection Act 1990 s 15(5)(b) (as substituted: see note 15).

17 Environmental Protection Act 1990 s 15(5) (as substituted: see note 15).

18 Environmental Protection Act 1990 s 15(6)(a).

19 Environmental Protection Act 1990 s 15(6)(b).

20 Environmental Protection Act 1990 s 15(6)(c).

21 Environmental Protection Act 1990 s 15(6)(d).

22 Environmental Protection Act 1990 s 15(6).

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177. Obtaining information from persons and authorities.

For the purposes of the discharge of his functions under Part I of the Environmental Protection Act 1990¹, the Secretary of State² may, by notice in writing served on an enforcing authority³, require the authority to furnish such information about the discharge of its functions as an enforcing authority under that Part as he may require⁴. For the purposes of the discharge of their respective functions, the following authorities, that is to say: (1) the Secretary of State; (2) a local enforcing authority⁵; and (3) the Environment Agency⁶, may, by notice in writing served on any person, require that person to furnish to the authority such information which the authority reasonably considers that it needs as is specified in the notice, in such form and within such period following service of the notice, or at such time, as is so specified⁷.

1 The Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed). For these purposes, the discharge by the Secretary of State of an obligation of the United Kingdom under the Community treaties or any international agreement relating to environmental protection is treated as a function of his under Pt I: s 19(3). As to the meaning of 'United Kingdom' see PARA 1 note 2.

As to the prospective repeal and replacement of Pt I see PARA 159 note 2.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the meaning of 'enforcing authority' see PARA 161 note 14.

4 Environmental Protection Act 1990 s 19(1).

5 As to the meaning of 'local enforcing authority' see PARA 161 note 14.

6 As to the Environment Agency see PARA 68 et seq.

7 Environmental Protection Act 1990 s 19(2) (amended by the Environment Act 1995 Sch 22 para 56). Failure without reasonable excuse to comply with any requirement imposed by such a notice is an offence: see PARA 181.

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(v) Information

178. Public registers of information.

It is the duty of each enforcing authority¹, as respects prescribed processes² for which it is the enforcing authority, to maintain, in accordance with regulations made by the Secretary of State³, a register containing prescribed particulars⁴ of or relating to:

- 172 (1) applications for authorisations made to that authority⁵;
- 173 (2) the authorisations which have been granted by that authority or in respect of which the authority has statutory functions⁶;
- 174 (3) variation notices, enforcement notices and prohibition notices issued by that authority⁷;
- 175 (4) revocations of authorisations effected by that authority⁸;
- 176 (5) appeals⁹;
- 177 (6) convictions for such offences as may be prescribed¹⁰;
- 178 (7) information obtained or furnished in pursuance of the conditions of authorisations or under any of the applicable statutory provisions¹¹;
- 179 (8) directions given to the authority under any such provision by the Secretary of State¹²; and
- 180 (9) such other matters relating to the carrying on of prescribed processes or any pollution of the environment caused thereby as may be prescribed¹³.

However, that duty is subject to certain provisions by which matters may or must be excluded from the register¹⁴.

The register maintained by a local enforcing authority¹⁵ in England and Wales must also contain prescribed particulars of such information contained in any register maintained by the Environment Agency¹⁶ as relates to the carrying on in the area of the authority of prescribed processes in relation to which the Agency has relevant statutory functions; and the Agency must furnish each authority with the particulars which are necessary to enable it to discharge its duty under this provision¹⁷.

The Secretary of State may give to enforcing authorities directions requiring the removal from any register of theirs of any specified information not prescribed for inclusion as described above, or which ought to have been excluded from the register¹⁸.

It is the duty of each enforcing authority: (a) to secure that the registers maintained by it are available, at all reasonable times, for inspection by the public free of charge; and (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges¹⁹.

Registers may be kept in any form²⁰.

1 As to the meaning of 'enforcing authority' see PARA 161 note 14.

2 As to the meanings of 'prescribed process' and 'process' see PARA 159.

3 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Environmental Protection Act 1990 s 20(1). In s 20, 'prescribed' means prescribed in regulations under that provision: s 20(10). The Environmental Protection (Applications, Appeals and Registers) Regulations 1991, SI 1991/507, regs 15-17 (amended by SI 1996/667; SI 1996/979) were made but the regulations have been revoked and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see PARA 662 et seq.

As to the prospective repeal and replacement of the Environmental Protection Act 1990 Pt I (ss 1-28) see PARA 159 note 2.

5 Environmental Protection Act 1990 s 20(1)(a). As to the meaning of 'authorisation' see PARA 159 note 3. As to access to environmental information generally see PARA 55.

6 Environmental Protection Act 1990 s 20(1)(b). The reference to statutory functions is a reference to functions under Pt I (prospectively repealed).

7 Environmental Protection Act 1990 s 20(1)(c). As to the meaning of 'variation notice' see PARA 168 note 3. As to the meaning of 'enforcement notice' see PARA 174. As to the meaning of 'prohibition notice' see PARA 175.

8 Environmental Protection Act 1990 s 20(1)(d). As to revocations see PARA 173.

9 Environmental Protection Act 1990 s 20(1)(e). As to appeals see s 15; and PARA 176.

10 Environmental Protection Act 1990 s 20(1)(f). See s 23(1); and PARA 181.

11 Environmental Protection Act 1990 s 20(1)(g). The reference to relevant statutory provisions is a reference to Pt I (prospectively repealed).

12 Environmental Protection Act 1990 s 20(1)(h).

13 Environmental Protection Act 1990 s 20(1)(i). As to the meaning of 'pollution of the environment' see PARA 160 note 16. As to the meaning of 'environment' see PARA 159 note 10.

14 Environmental Protection Act 1990 s 20(1). This provision is expressed to be subject to ss 21, 22: see PARAS 179-180. Where information of any description is excluded from any register for reason of commercial confidentiality (ie by virtue of s 22: see PARA 180), a statement must be entered in the register indicating the existence of information of that description: s 20(5).

15 As to the meaning of 'local enforcing authority' see PARA 161 note 14.

16 As to the Environment Agency see PARA 68 et seq.

17 Environmental Protection Act 1990 s 20(2) (amended by the Environment Act 1995 Sch 22 PARA 57(2)). This does not apply to port health authorities, but each local enforcing authority in England and Wales whose area adjoins that of a port health authority must include corresponding information in the register maintained by it; and the Environment Agency must furnish each such local enforcing authority with the particulars which are necessary to enable it to discharge that duty: Environmental Protection Act 1990 s 20(4) (amended by the Environment Act 1995 Sch 22 PARA 57(4)). As to port health authorities see PARA 102.

18 Environmental Protection Act 1990 s 20(6).

19 Environmental Protection Act 1990 s 20(7)(a), (b). For these purposes, places may be prescribed by the Secretary of State at which any such registers or facilities are to be available or afforded to the public: see s 20(7) (amended by the Environment Act 1995 Sch 22 para 57(5)).

20 Environmental Protection Act 1990 s 20(8).

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179. Exclusion from registers of information affecting national security.

No information will be included in a register¹ if and so long as, in the opinion of the Secretary of State², the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security³. The Secretary of State may, for the purpose of securing the exclusion from registers of information affecting national security, give to enforcing authorities⁴ directions:

- 181 (1) specifying information, or descriptions of information, to be excluded from their registers⁵; or
- 182 (2) specifying descriptions of information to be referred to the Secretary of State for his determination⁶,

and no information referred to the Secretary of State in pursuance of head (2) above may be included in any such register until the Secretary of State determines that it should be so included⁷. The enforcing authority must notify the Secretary of State of any information it excludes from the register in pursuance of such directions⁸.

A person may, as respects any information which appears to him to be information which may affect national security, give a notice to the Secretary of State specifying the information and indicating its apparent nature⁹; and, if he does so:

- 183 (a) he must notify the enforcing authority that he has done so¹⁰; and
- 184 (b) no information so notified to the Secretary of State may be included in any such register until the Secretary of State has determined that it should be so included¹¹.

1 Ie a register maintained under the Environmental Protection Act 1990 s 20: see PARA 178. As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Environmental Protection Act 1990 s 21(1).

4 As to the meaning of 'enforcing authority' see PARA 161 note 14.

5 Environmental Protection Act 1990 s 21(2)(a).

6 Environmental Protection Act 1990 s 21(2)(b).

7 Environmental Protection Act 1990 s 21(2).

8 Environmental Protection Act 1990 s 21(3).

9 Environmental Protection Act 1990 s 21(4).

10 Environmental Protection Act 1990 s 21(4)(a).

11 Environmental Protection Act 1990 s 21(4)(b).

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180. Exclusion from registers of certain confidential information.

No information relating to the affairs of any individual or business may be included in a register¹ without the consent of that individual or the person for the time being carrying on that business², if and so long as the information is, in relation to him, commercially confidential³ and is not required to be included in the register in pursuance of directions⁴.

Where information is furnished to an enforcing authority for the purpose of:

- 185 (1) an application for an authorisation⁵ or for the variation of an authorisation;
- 186 (2) complying with any condition⁶ of an authorisation; or
- 187 (3) complying with a notice requiring the furnishing of information⁷,

then, if the person furnishing it applies to the authority to have the information excluded from the register on the ground that it is commercially confidential (as regards himself or another person), the authority must determine whether the information is or is not commercially confidential⁸. Where it appears to an enforcing authority that any information⁹ which has been obtained by the authority¹⁰ might be commercially confidential, the authority must:

- 188 (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register unless excluded under these provisions¹¹; and
 - 189 (b) give him a reasonable opportunity:
7
 - 7. (i) of objecting to the inclusion of the information on the ground that it is commercially confidential¹²; and
 - 8. (ii) of making representations to the authority for the purpose of justifying any such objection¹³,
- 8

and, if any representations are made, the enforcing authority must, having taken the representations into account, determine whether the information is or is not commercially confidential¹⁴. Where an authority determines that information is not commercially confidential¹⁵:

- 190 (A) the information must not be entered in the register until the end of the period of 21 days beginning with the date on which the determination is notified to the person concerned¹⁶;
- 191 (B) that person may appeal to the Secretary of State against the decision¹⁷.

Where such an appeal is brought in respect of any information, the information may not be entered in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn¹⁸.

The Secretary of State may give directions to the enforcing authorities as to specified information, or descriptions of information, which the public interest requires to be included in registers notwithstanding that the information may be commercially confidential¹⁹.

Information excluded from a register will be treated as ceasing to be commercially confidential for the purposes of these provisions at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority must determine whether or not that is the case²⁰.

1 Ie a register maintained under the Environmental Protection Act 1990 s 20: see PARA 178. As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

2 Environmental Protection Act 1990 s 22(1).

3 Environmental Protection Act 1990 s 22(1)(a). Information is, for the purposes of any determination under s 22, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person: s 22(11). However, information is not commercially confidential for these purposes unless it is determined under s 22 to be so by the enforcing authority or, on appeal, by the Secretary of State: s 22(1). As to confidential information generally see **CONFIDENCE AND DATA PROTECTION**. As to the meaning of 'enforcing authority' see PARA 161 note 14. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Environmental Protection Act 1990 s 22(1)(b). As to the register of directions see s 22(7); and the text and note 19.

5 As to the meaning of 'authorisation' see PARA 159 note 3.

6 As to conditions of authorisations see PARA 165.

7 Ie a notice under the Environmental Protection Act 1990 s 19(2): see PARA 177.

8 Environmental Protection Act 1990 s 22(2). Such a determination must be made within the period of 14 days beginning with the date of the application; and if the enforcing authority fails to make a determination within that period it will be treated as having determined that the information is commercially confidential: s 22(3). The Secretary of State may by order substitute for the period for the time being specified in s 22(3) such other period as he considers appropriate: s 22(10). At the date at which this volume states the law no such order had been made.

9 Ie other than information furnished in circumstances within the Environmental Protection Act 1990 s 22(2): see the text and note 8.

10 Ie under or by virtue of any provision of the Environmental Protection Act 1990 Pt I (prospectively repealed).

11 Environmental Protection Act 1990 s 22(4)(a).

12 Environmental Protection Act 1990 s 22(4)(b)(i).

13 Environmental Protection Act 1990 s 22(4)(b)(ii).

14 Environmental Protection Act 1990 s 22(4).

15 Ie under the Environmental Protection Act 1990 s 22(2) or (4): see the text and notes 8-14.

16 Environmental Protection Act 1990 s 22(5)(a) (amended by the Environment Act 1995 Sch 22 para 58(2)).

17 Environmental Protection Act 1990 s 22(5)(b).

18 Environmental Protection Act 1990 s 22(5) (amended by the Environment Act 1995 Sch 22 para 58(2)). The provisions of the Environmental Protection Act 1990 s 15(5), (10) (see PARA 176) apply in relation to an appeal under s 22(5) as in relation to an appeal under s 15; but s 15(5) has effect so that the hearing must be

held in private, and s 22(5) is subject to the Environment Act 1995 s 114 (see PARA 65): Environmental Protection Act 1990 s 22(6) (substituted by the Environment Act 1995 Sch 22 para 58(3)).

19 Environmental Protection Act 1990 s 22(7).

20 Environmental Protection Act 1990 s 22(8). Section 22(5) and s 22(6) (see the text and note 18) apply in relation to a determination under s 22(8) as in relation to a determination under s 22(2) or (4) (see the text and notes 8-14); s 22(9).

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(vi) Offences and Remedying the Harm

181. Offences.

It is an offence for a person:

- 192 (1) to carry on a prescribed process without due authorisation¹;
- 193 (2) to fail to give the notice required by provisions relating to the transfer of authorisations²;
- 194 (3) to fail to comply with or to contravene any requirement or prohibition imposed by an enforcement notice or a prohibition notice³;
- 195 (4) to fail, without reasonable excuse, to comply with any requirement imposed by a notice requiring the furnishing of information⁴;
- 196 (5) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made: (a) in purported compliance with a requirement to furnish any information imposed by or under any provision of Part I of the Environmental Protection Act 1990⁵; or (b) for the purpose of obtaining the grant of an authorisation to himself or any other person or the variation of an authorisation⁶;
- 197 (6) intentionally to make a false entry in any record required to be kept in relation to conditions for authorisation⁷;
- 198 (7) with intent to deceive, to forge or use a document issued or authorised to be issued in relation to conditions for authorisation⁸ or required for any purpose in that regard, or to make or have in his possession a document so closely resembling any such document as to be likely to deceive⁹;
- 199 (8) to fail to comply with an order made by a court for the cause of an offence to be remedied¹⁰.

A person guilty of an offence under these provisions is liable to a penalty¹¹.

1 Environmental Protection Act 1990 s 23(1)(a). This refers to a contravention of s 6(1) (see PARA 162): see s 23(1)(a). As to the meaning of 'authorisation' see PARA 159 note 3. As to the meanings of 'prescribed process' and 'process' see PARA 159. See also *Dudley Metropolitan Borough Council v Henley Foundries Ltd* [1999] Env LR 895 (interpretation of authorisation condition by reference to dictionary definition and no defence of emergency).

As to the prospective repeal and replacement of the Environmental Protection Act 1990 Pt I (ss 1-28) see PARA 159 note 2.

2 Environmental Protection Act 1990 s 23(1)(b). The notice referred to in the text is the notice required by s 9(2) (see PARA 167): see s 23(1)(b).

3 Environmental Protection Act 1990 s 23(1)(c). As to the meaning of 'enforcement notice' see PARA 174. As to the meaning of 'prohibition notice' see PARA 175.

4 Environmental Protection Act 1990 s 23(1)(g). The notice referred to is a notice under s 19(2) (see PARA 177): see s 23(1)(g).

5 I.e. the Environmental Protection Act 1990 Pt I (prospectively repealed). See note 1.

6 Environmental Protection Act 1990 s 23(1)(h).

7 Environmental Protection Act 1990 s 23(1)(i). The reference in the text is a reference to a record required to be kept under s 7 (see PARA 165): see s 23(1)(i).

8 le under the Environmental Protection Act 1990 s 7: see PARA 165.

9 Environmental Protection Act 1990 s 23(1)(j).

10 Environmental Protection Act 1990 s 23(1)(l). The reference in the text is a reference to an order under s 26 (see PARA 184): see s 23(1)(l).

11 A person guilty of an offence under head (1), (3) or (8) in the text is liable: (1) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding three months, or to both; (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both: Environmental Protection Act 1990 s 23(2) (amended by the Environment Act 1995 Sch 22 para 59(3)). A person guilty of an offence under head (2), (4), (5), (6) or (7) in the text is liable: (a) on summary conviction, to a fine not exceeding the statutory maximum; (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both: Environmental Protection Act 1990 s 23(3). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

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182. Enforcement by the High Court.

If the enforcing authority¹ is of the opinion that proceedings for an offence² would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice³ or a prohibition notice⁴, the authority may take proceedings in the High Court for the purpose of securing compliance with the notice⁵.

1 As to the meaning of 'enforcing authority' see PARA 161 note 14.

2 I.e. an offence under the Environmental Protection Act 1990 s 23(1)(c); see PARA 181. As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

3 As to the meaning of 'enforcement notice' see PARA 174.

4 As to the meaning of 'prohibition notice' see PARA 175.

5 Environmental Protection Act 1990 s 24. See *Tameside Metropolitan Borough Council v Smith Bros (Hyde) Ltd* [1996] Env LR D4.

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183. Onus of proof as regards techniques and evidence.

In any proceedings for an offence¹ consisting in a failure to comply with the general condition implied in every authorisation², it is for the accused to prove that there was no better available technique not entailing excessive cost³ than was in fact used to satisfy the condition⁴.

Where an entry is required to be made in any record⁵ as to the observance of any condition of an authorisation, and the entry has not been made, that fact is admissible as evidence that that condition has not been observed⁶.

1 Ie an offence under the Environmental Protection Act 1990 s 23(1)(a): see PARA 181. As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

2 As to the general condition see the Environmental Protection Act 1990 s 7(4); and PARA 165. As to the meaning of 'authorisation' see PARA 159 note 3.

3 As to the meaning of 'best available techniques not entailing excessive cost' see PARA 165 note 3.

4 Environmental Protection Act 1990 s 25(1).

5 Ie under the Environmental Protection Act 1990 s 7: see PARA 165.

6 Environmental Protection Act 1990 s 25(2). This does not have effect in relation to any entry required to be made in any record by virtue of a condition of a relevant licence, within the meaning of the Environment Act 1995 s 111 (see PARA 152): Environmental Protection Act 1990 s 25(3) (added by the Environment Act 1995 s 111(6)).

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184. Power of court to order cause of offence to be remedied.

Where a person is convicted of an offence consisting in carrying on a prescribed process without authorisation¹ or failure to comply with the requirements of an enforcement notice or prohibition notice² in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters³.

Failure to comply with such an order is itself an offence⁴.

Where a person is so ordered to remedy any matters, he is not liable for an offence in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed⁵.

1 Is an offence under the Environmental Protection Act 1990 s 23(1)(a); see PARA 181. As to the meanings of 'prescribed process' and 'process' see PARA 159.

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

2 Is an offence under the Environmental Protection Act 1990 s 23(1)(c) (see PARA 181). As to the meaning of 'enforcement notice' see PARA 174; and as to the meaning of 'prohibition notice' see PARA 175.

3 Environmental Protection Act 1990 s 26(1). The time fixed by an order under s 26(1) may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this provision, as the case may be: s 26(2).

4 See PARA 181.

5 Environmental Protection Act 1990 s 26(3).

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185. Power of Environment Agency to remedy harm.

Where the commission of an offence consisting in carrying on a prescribed process without authorisation¹, or failure to comply with the requirements of an enforcement notice or prohibition notice², causes any harm³ which it is possible to remedy, the Environment Agency⁴ may⁵: (1) arrange for any reasonable steps to be taken towards remedying the harm⁶; and (2) recover the cost of taking those steps from any person convicted of that offence⁷.

The Environment Agency may not exercise its powers under these provisions except with the approval in writing of the Secretary of State⁸ and, where any of the steps are to be taken on or will affect land in the occupation of any person other than the person on whose land the prescribed process is being carried on, with the permission of that person⁹.

1 Is an offence under the Environmental Protection Act 1990 s 23(1)(a): see PARA 181. As to the meanings of 'prescribed process' and 'process' see PARA 159.

As to the prospective repeal and replacement of Pt I (ss 1-28) see PARA 159 note 2.

2 Is an offence under the Environmental Protection Act 1990 s 23(1)(c): see PARA 181. As to the meaning of 'enforcement notice' see PARA 174; and as to the meaning of 'prohibition notice' see PARA 175.

3 As to the meaning of 'harm' see PARA 160 note 16.

4 As to the Environment Agency see PARA 68 et seq. See also PARA 161 note 5.

5 Environmental Protection Act 1990 s 27(1) (amended by the Environment Act 1995 Sch 22 para 60). This is subject to the Environmental Protection Act 1990 s 27(2): see the text and note 9.

6 Environmental Protection Act 1990 s 27(1)(a). See the Environmental Damage (Prevention and Remediation) Regulations 2009, SI 2009/153; and PARA 5.

7 Environmental Protection Act 1990 s 27(1)(b).

8 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Environmental Protection Act 1990 s 27(2) (amended by the Environment Act 1995 Sch 22 para 60).

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(3) INTEGRATED POLLUTION PREVENTION AND CONTROL

186. Regulation of polluting activities.

The Pollution Prevention and Control Act 1999 provides that the Secretary of State¹ may by regulations² make provision for specified purposes³ with the general purposes of:

- 200 (1) implementing European Union legislation⁴ concerning integrated pollution prevention and control⁵;
- 201 (2) regulating, otherwise than in pursuance of that legislation, activities⁶ which are capable of causing any environmental pollution⁷; and
- 202 (3) otherwise preventing or controlling emissions capable of causing any such pollution⁸.

Before making any such regulations, the Secretary of State must consult⁹: (a) the Environment Agency¹⁰; (b) such bodies or persons appearing to him to be representative of the interests of local government, industry, agriculture and small businesses respectively as he may consider appropriate; and (c) such other bodies or persons as he may consider appropriate¹¹.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the application of the Pollution Prevention and Control Act 1999 to Wales and Scotland see s 5.

2 Such regulations may contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions amending, repealing or revoking enactments) as the Secretary of State considers appropriate, and make different provision for different cases, including different provision in relation to different persons, circumstances, areas or localities: Pollution Prevention and Control Act 1999 s 2(3). The power to make regulations under s 2 must be exercised by statutory instrument: s 2(6). A statutory instrument containing such regulations, if made without a draft having been laid before, and approved by a resolution of, each House of Parliament, is subject to annulment in pursuance of a resolution of either House: s 2(7). However, certain regulations may not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 2(8). Those regulations are: (1) the first regulations to be made under s 2; (2) regulations which create an offence or increase a penalty for an existing offence; and (3) regulations which repeal or amend a provision of an Act: s 2(9).

At the date at which this volume states the law, the following regulations have been made under s 2: the Pollution Prevention and Control (England and Wales) Regulations 2000, SI 2000/1973 (revoked) (see now the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARA 662 et seq); the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091 (amended by SI 2003/3311; SI 2005/2055; and SI 2007/938); the Offshore Chemicals Regulations 2002, SI 2002/1355 (amended by SI 2005/2055); the Landfill (England and Wales) Regulations 2002, SI 2002/1559 (revoked) (see now the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARA 662 et seq); the Large Combustion Plants (England and Wales) Regulations 2002, SI 2002/2688 (revoked) (see now the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARA 662 et seq); the Waste Incineration (England and Wales) Regulations 2002, SI 2002/2980 (revoked) (see now the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARA 662 et seq); the Solvent Emissions (England and Wales) Regulations 2004, SI 2004/107 (revoked) (see now the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARA 662 et seq); the Pollution Prevention and Control (Unauthorised Part B Processes) (England and Wales) Regulations 2004, SI 2004/434 (revoked) (see now the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARA 662 et seq); the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925 (see PARA 260); the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1695 et seq); the Large Combustion Plants (National Emission Reduction

Plan) Regulations 2007, SI 2007/2325 (amended by SI 2007/3476; and SI 2007/3538) (see also PARA 11); the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009, SI 2009/2301 (see **FUEL AND ENERGY**); the Groundwater (England and Wales) Regulations 2009, SI 2009/2902 (see PARA 335); and the Greenhouse Gas Emissions Data and National Implementation Measures Regulations 2009, SI 2009/3130. As to the consideration of certain issues under the Pollution Prevention and Control (England and Wales) Regulations 2000, SI 2000/1973 (now revoked) see *United Utilities Water plc v Environment Agency for England and Wales* [2006] EWCA Civ 633, [2006] Env LR 42, [2006] All ER (D) 292 (May) (affd [2007] UKHL 41, [2008] 1 All ER 741, [2007] 1 WLR 2707); *Kent v First Secretary of State* [2004] EWHC 2953 (Admin), (2004) Times, 12 November, [2004] All ER (D) 52 (Dec). See also *R (on the application of Edwards) v Environment Agency* [2005] EWHC 657 (Admin), [2006] Env LR 3, [2005] All ER (D) 230 (Apr) (affd [2006] EWCA Civ 877, [2007] Env LR 9, [2006] All ER (D) 309 (Jun)); *R (on the application of Rockware Glass Ltd) v Chester City Council* [2006] EWCA Civ 992, [2006] All ER (D) 151 (Jun).

3 Pollution Prevention and Control Act 1999 s 2(1), (2). The specified purposes are any of the purposes listed in Sch 1 Pt I: see PARA 187 heads (1)-(21). There are provisions supplementary to Sch 1 Pt I: see Sch 1 Pt II; PARA 187 notes 9, 11, 23; and PARA 187 text and notes 28-31.

The regime of integrated pollution prevention and control ('IPPC') is being introduced, industry by industry (represented by the various regulations listed in note 2). The intention was that this regime would thus gradually replace the provisions of the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) (see PARA 159 et seq). As to the prospective repeal and replacement of Pt I see PARA 159 note 2.

Where an activity is subject to regulations under the Pollution Prevention and Control Act 1999 s 2, then the Clean Air Act 1993 Pt I (ss 1-3), Pt II (ss 4-16) and Pt III (ss 18-29) do not apply as from the determination date for the activity in question: see s 41A(1); and PARA 191 note 1.

4 I.e. EC Council Directive 96/61 (OJ L257, 10.10.96, p 26) concerning integrated pollution prevention and control (now repealed and replaced by European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version)): see PARAS 6, 158.

5 Pollution Prevention and Control Act 1999 s 1(1)(a).

6 'Activities' means activities of any nature, whether industrial or commercial or other activities, or whether carried on on particular premises or otherwise, and includes (with or without other activities) the depositing, keeping or disposal of any substance: Pollution Prevention and Control Act 1999 s 1(2).

As to what constitute landfill activities for the purposes of the Landfill (England and Wales) Regulations 2002, SI 2002/1559 (now revoked) (see note 2) see *Blackland Park Exploration Ltd v Environment Agency* [2003] EWCA Civ 1795, [2004] Env LR 33, (2003) Times, 2 January. See also *R (on the application of Anti-Waste Ltd) v Environment Agency* [2007] EWCA Civ 1377, [2008] 1 WLR 923, [2008] Env LR 18.

7 Pollution Prevention and Control Act 1999 s 1(1)(b). 'Environmental pollution' means pollution of the air, water or land which may give rise to any harm; and for this purpose 'pollution' includes pollution caused by noise, heat or vibrations or any other kind of release of energy, and 'air' includes air within buildings and air within other natural or man-made structures above or below ground: s 1(2). 'Harm' means: (1) harm to the health of human beings or other living organisms; (2) harm to the quality of the environment, including (a): harm to the quality of the environment taken as a whole; (b) harm to the quality of the air, water or land; and (c) other impairment of, or interference with, the ecological systems of which any living organisms form part; (3) offence to the senses of human beings; (4) damage to property; or (5) impairment of, or interference with, amenities or other legitimate uses of the environment: s 1(3). Expressions used in s 1(3) have the same meaning as in EC Council Directive 96/61 (OJ L257, 10.10.96, p 26) (now repealed and replaced by European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8)) (see note 4; and PARA 6): Pollution Prevention and Control Act 1999 s 1(3).

8 Pollution Prevention and Control Act 1999 s 1(1)(c).

9 Consultation undertaken before the passing of the Pollution Prevention and Control Act 1999 is sufficient: s 2(5). The Pollution Prevention and Control Act 1999 was passed on 27 July 1999.

10 As to the Environment Agency see PARA 68 et seq.

11 Pollution Prevention and Control Act 1999 s 2(4).

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187. Regulations for integrated pollution prevention and control.

The particular purposes for which regulations for integrated pollution prevention and control¹ may be made are²:

- 203 (1) (a) establishing standards, objectives or requirements in relation to emissions; (b) authorising the making of plans for the setting of overall limits, the allocation of quotas, or the progressive improvement of standards or objectives, relating to such emissions; and (c) authorising the making of schemes for the trading or other transfer of quotas so allocated³;
- 204 (2) (a) determining the authorities (whether public or local or the Secretary of State) by whom functions conferred by the regulations in relation to permits under the regulations, or otherwise for or in connection with the prevention or control of environmental pollution, are to be exercisable ('regulators'); and (b) specifying any purposes for which any such functions are to be exercisable by regulators⁴;
- 205 (3) enabling the Secretary of State to give directions which regulators are to comply with, or guidance which regulators are to have regard to, in exercising functions under the regulations, including: (a) directions providing for any functions exercisable by one regulator to be instead exercisable by another; (b) directions given for the purposes of the implementation of any obligations of the United Kingdom⁵ under the European Union treaties or under any international agreement to which the United Kingdom is a party; (c) directions relating to the exercise of any function in a particular case or class of case⁶;
- 206 (4) prohibiting persons from operating any installation or plant of any specified description, or otherwise carrying on any activities of any specified description, except: (a) under a permit in force under the regulations; and (b) in accordance with any conditions to which the permit is subject⁷;
- 207 (5) specifying restrictions or other requirements in connection with the grant of permits (including provisions for restricting the grant of permits to those who are fit and proper persons within the meaning of the regulations), and otherwise regulating the procedure to be followed in connection with the grant of permits⁸;
- 208 (6) (a) prescribing the contents of permits; (b) authorising permits to be granted subject to conditions imposed by regulators; and (c) securing that permits have effect subject to conditions specified in the regulations or subject to rules of general application specified in or made under the regulations⁹;
- 209 (7) (a) requiring permits or the conditions to which permits are subject to be reviewed by regulators (whether periodically or in any specified circumstances); (b) authorising or requiring the variation of permits or such conditions by regulators (whether on applications made by holders of permits or otherwise); and (c) regulating the making of changes in the operation of the installations or plant to which permits relate, or in the case of permits for the carrying on of activities otherwise than in the course of operating any installation or plant, in the carrying on of the activities¹⁰;
- 210 (8) (a) regulating the transfer or surrender of permits; (b) authorising the revocation of permits by regulators; and (c) authorising the imposition by regulators of requirements with respect to the taking of preventive or remedial

- action (by holders of permits or other persons) in connection with the surrender or revocation of permits¹¹;
- 211 (9) authorising the Secretary of State to make schemes for the charging by regulators of fees or other charges in respect of, or in respect of an application for: (a) the grant of a permit; (b) the variation of a permit or the conditions to which it is subject; or (c) the transfer or surrender of a permit, or in respect of the subsistence of a permit¹²;
- 212 (10) authorising the Secretary of State to make schemes for the charging by regulators of charges, as respects greenhouse gas emissions permits¹³ in relation to offshore installations¹⁴;
- 213 (11) authorising, or authorising a Minister of the Crown to make schemes for, the charging by Ministers of the Crown or public or local authorities of fees or other charges in respect of: (a) the testing or analysis of substances; (b) the validating of, or of the results of, any testing or analysis of substances; or (c) assessing how the environment might be affected by the release into it of any substances, in cases where the testing, analysis, validating or assessing is in any way in anticipation of, or otherwise in connection with, the making of applications for the grant of permits or is carried out in pursuance of conditions to which any permit is subject¹⁵;
- 214 (12) enabling persons of any specified description (whether or not they are holders of permits) to be required: (a) to compile information on emissions within the meaning of the regulations, on energy consumption and the efficiency with which energy is used, and on waste within the meaning of the regulations and on the destinations of such waste; and (b) to provide such information in such manner as is specified in the regulations¹⁶;
- 215 (13) securing: (a) that publicity is given to specified matters; (b) that regulators maintain registers of specified matters (but excepting information which under the regulations is, or is determined to be, commercially confidential and subject to any other exceptions specified in the regulations) which are open to public inspection; and (c) that copies of entries in such registers, or of specified documents, may be obtained by members of the public¹⁷;
- 216 (14) requiring or authorising regulators to carry out consultation in connection with the exercise of any of their functions, and providing for them to take into account representations made to them on consultation¹⁸;
- 217 (15) (a) conferring on regulators functions with respect to the monitoring and inspection of the carrying on of activities to which permits relate, including power to take samples or to make copies of information, and power to arrange for preventive or remedial action to be taken at the expense of holders of permits; and (b) authorising regulators to appoint suitable persons to exercise any such functions and conferring powers¹⁹ on persons so appointed²⁰;
- 218 (16) (a) authorising regulators to serve on holders of permits notices requiring them to take remedial action in respect of contraventions, actual or potential, of conditions to which their permits are subject, notices requiring them to provide such financial security as the regulators serving the notices consider appropriate pending the taking of remedial action in respect of any such contraventions, and notices requiring them to take steps to remove imminent risks of serious environmental pollution (whether or not arising from any such contraventions); and (b) providing for the enforcement of such notices by proceedings in the High Court²¹;
- 219 (17) authorising regulators to suspend the operation of permits so far as having effect to authorise the carrying on of activities to which they relate²²;
- 220 (18) creating offences and dealing with matters relating to such offences, including the provision of defences and evidentiary matters²³;
- 221 (19) enabling, where a person has been convicted of an offence under the regulations, a court dealing with that person for the offence to order the taking of

- remedial action (in addition to or instead of imposing any punishment), or enabling a regulator to arrange for such action to be taken at that person's expense²⁴;
- 222 (20) conferring rights of appeal in respect of decisions made, notices served or other things done (or omitted to be done) under the regulations, and making provision for (or for the determination of) matters relating to the making, considering and determination of such appeals (including provision for or in connection with the holding of inquiries or hearings)²⁵;
- 223 (21) making provision which, subject to any modifications that the Secretary of State considers appropriate, corresponds or is similar to provisions made by or under, or capable of being made under, specified statutory provisions²⁶, and making provision about the application of the regulations to the Crown²⁷.

The regulations may provide for specified provisions of the regulations to have effect in relation only to such environmental pollution as is specified²⁸. The regulations may authorise the inclusion in a trading scheme²⁹ of provision for penalties in respect of contraventions of provisions of the scheme, and provision for the amount of any penalty under the scheme to be such as may be set out in, or calculated in accordance with the scheme or the regulations (including regulations made after the scheme)³⁰. The regulations may also make provision for certain matters³¹ to be determined under the regulations by regulators³².

1 The regulations under the Pollution Prevention and Control Act 1999 s 2(1): see PARA 186 note 2.

2 Pollution Prevention and Control Act 1999 s 2(1), Sch 1 Pt I paras 1-20. For supplementary provisions see Sch 1 Pt II (paras 21-26).

3 Pollution Prevention and Control Act 1999 Sch 1 para 1.

4 Pollution Prevention and Control Act 1999 Sch 1 para 2.

5 As to the meaning of 'United Kingdom' see PARA 1 note 2.

6 Pollution Prevention and Control Act 1999 Sch 1 para 3.

7 Pollution Prevention and Control Act 1999 Sch 1 para 4.

8 Pollution Prevention and Control Act 1999 Sch 1 para 5.

9 Pollution Prevention and Control Act 1999 Sch 1 para 6. In connection with the determination of such conditions as are mentioned in head (6)(c) in the text, the regulations may in particular provide for such conditions to be determined in the light of any specified general principles and any directions or guidance given under the regulations, and for such guidance to include guidance sanctioning reliance by a regulator on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to imposing a condition: Sch 1 para 23.

10 Pollution Prevention and Control Act 1999 Sch 1 para 7.

11 Pollution Prevention and Control Act 1999 Sch 1 para 8.

12 Pollution Prevention and Control Act 1999 Sch 1 para 9. The regulations may require any such scheme (ie as mentioned in Sch 1 paras 9, 9A, 10: see heads (10) and (11) in the text) to be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure (whether or not incurred by the regulator or other person to whom they are so payable) as is specified, and may authorise any such scheme to make different provision for different cases (and specify particular kinds of such cases): Sch 1 para 24 (amended by SI 2005/925).

13 In the Pollution Prevention and Control Act 1999 Sch 1 para 9A, 'greenhouse gas emissions permit' and 'offshore installation' have the same meanings as in the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925 (see PARAS 160, 260): Pollution Prevention and Control Act 1999 Sch 1 para 9A(3) (Sch 1 para 9A added by SI 2005/925).

14 Pollution Prevention and Control Act 1999 Sch 1 para 9A(1) (as added: see note 13). The schemes are those that may be prescribed under the Environment Act 1995 s 41 (read with s 41A) (see PARA 97): see the Pollution Prevention and Control Act 1999 Sch 1 para 9A(1) (as so added). See also notes 12, 13.

15 Pollution Prevention and Control Act 1999 Sch 1 para 10. See also note 12.

16 Pollution Prevention and Control Act 1999 Sch 1 para 11.

17 Pollution Prevention and Control Act 1999 Sch 1 para 12.

18 Pollution Prevention and Control Act 1999 Sch 1 para 13.

19 ie such as those specified in the Environment Act 1995 s 108(4): see PARA 148.

20 Pollution Prevention and Control Act 1999 Sch 1 para 14.

21 Pollution Prevention and Control Act 1999 Sch 1 para 15.

22 Pollution Prevention and Control Act 1999 Sch 1 para 16.

23 Pollution Prevention and Control Act 1999 Sch 1 para 17. The regulations may provide for any such offence to be triable only summarily, or either summarily or on indictment: Sch 1 para 25(1). They may provide for such an offence to be punishable: (1) on summary conviction by imprisonment for a term not exceeding a specified period (which may not exceed 12 months), or a fine not exceeding a specified amount (which may not exceed £50,000), or both; or (2) on conviction on indictment by imprisonment for a term not exceeding a specified period (which may not exceed five years), or a fine, or both: Sch 1 para 25(2) (amended by the Clean Neighbourhoods and Environment Act 2005 s 105(1)). The amendment to head (1) above (previously it was 'six months') does not have effect in relation to regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARA 186) so far as relating to offences committed before the commencement of the Criminal Justice Act 2003 s 154(1) (see **MAGISTRATES**): Clean Neighbourhoods and Environment Act 2005 s 105(2) (amended by the Climate Change Act 2008 s 88(1)).

24 Pollution Prevention and Control Act 1999 Sch 1 para 18.

25 Pollution Prevention and Control Act 1999 Sch 1 para 19.

26 The specified statutory provisions are: (1) any provision made by or under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) or Pt II (ss 29-78), or made by any of s 157, s 158, or s 160 (see PARAS 145-147); (2) the European Communities Act 1972 s 2(2) in connection with the relevant Directives: Pollution Prevention and Control Act 1999 Sch 1 para 20(1). As to the prospective repeal and replacement of the Environmental Protection Act 1990 Pt I see PARA 159 note 2.

The 'relevant Directives' are: (a) EC Council Directive 96/61 (OJ L257, 10.10.96, p 26) concerning integrated pollution prevention and control (now repealed and replaced by European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8)) (see note 4; and PARA 6); (b) EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) on waste (see PARA 33); and (c) any other EC Council Directive designated by the Secretary of State for this purpose by order made by statutory instrument: Pollution Prevention and Control Act 1999 Sch 1 para 20(2).

EC Council Directive 80/68 (OJ L20, 26.01.80, p 43) on the protection of groundwater against pollution caused by certain dangerous substances (see PARA 28), EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) on the prevention and reduction of environmental pollution by asbestos (see PARAS 11, 25, 47), EEC Council Directive 92/112 (OJ L409, 31.12.92, p 11) on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry (see PARA 38), European Parliament and EC Council Directive 94/63 (OJ L365, 31.12.94, p 24) on the control of volatile organic compound emissions resulting from the storage of petrol and its distribution from terminals to service stations (see PARA 48), Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1) laying down the revised basic safety standards for the health protection of the general public and workers against the dangers of ionising radiation (see PARA 50), EC Council Directive 99/13 (OJ L85, 29.3.99, p 1) on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (see PARA 12), EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) on the landfill of waste (see PARA 43), European Parliament and EC Council Directive 2000/53 (OJ L 269, 21.10.2000, p 34) on end-of-life vehicles (see PARAS 33, 39), European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy (see PARAS 23, 24, 54), European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2000, p 91) on the incineration of waste (see PARAS 11, 25, 41, 42), European Parliament and EC Council Directive 2001/80 (OJ L309, 27.11.2001, p 1) on the limitation of emissions of certain pollutants into the air from large combustion plants (see PARAS 11, 13, 18), European Parliament and EC Council Directive 2001/81 (OJ L309, 27.11.2001, p 22) on national emission ceilings for certain atmospheric pollutants (see PARA 11), European Parliament and EC Council Directive 2002/96 (OJ L37, 13.2.2003, p 24) on waste electrical and electronic equipment (see PARA 33), Euratom Council Directive 2003/122 (OJ L346, 31.12.2003, p 57) on the control of high-activity sealed

radioactive sources and orphan sources (see PARA 50), European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) on waste (see PARA 33), European Parliament and EC Council Directive 2006/21 (OJ L102 11.4.2006 p 15) on the management of waste from extractive industries and amending Directive 2004/35 (see PARA 45), European Parliament and EC Council Directive 2006/66 (OJ L266 26.9.2006 p 1) on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157 (see PARA 37), European Parliament and EC Council Directive 2006/118 (OJ L372 27.12.2006 p 19) on the protection of groundwater against pollution and deterioration (see PARA 28), European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (see PARAS 6, 11) and European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3) on waste and repealing certain Directives (see PARAS 33, 34) are designated for the purposes of head (c) above by the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2010, SI 2010/75 (which consolidates and revokes the following earlier orders: the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2007, SI 2007/2247, the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2008, SI 2008/2549, and the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2009, SI 2009/1517). See also the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007, SI 2007/2325; and PARA 186 note 2.

27 Pollution Prevention and Control Act 1999 Sch 1 para 20.

28 Pollution Prevention and Control Act 1999 Sch 1 para 21.

29 'Trading scheme' means a scheme of the kind mentioned in head (i)(c) in the text: Pollution Prevention and Control Act 1999 Sch 1 para 21A(2) (Sch 1 para 21A added by the Waste and Emissions Trading Act 2003 s 38).

30 Pollution Prevention and Control Act 1999 Sch 1 para 21A(1) (as added: see note 29).

31 Ie anything which, by virtue of Pollution Prevention and Control Act 1999 Sch 1 paras 5-8 (see heads (5)-(8) in the text) could be provided for by the regulations.

32 Pollution Prevention and Control Act 1999 Sch 1 para 22.

UPDATE

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NOTE 26--SI 2007/2247, SI 2008/2549, SI 2009/1517 replaced: Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2010, SI 2010/75.

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188. Prevention etc of pollution after accidents involving offshore installations.

The Secretary of State¹ may, in relation to offshore installations², by regulations³ make provision which, subject to any modifications that he considers appropriate, corresponds or is similar to any provision made by, or capable of being made under, merchant shipping legislation⁴ made in relation to ships for the prevention and reduction of pollution, and the risk of pollution, by oil or other substances following an accident⁵.

Before making any such regulations under these provisions, the Secretary of State must consult: (1) the Environment Agency⁶; (2) such bodies or persons appearing to him to be representative of the interests of owners or operators of offshore installations as he may consider appropriate; and (3) such other bodies or persons as he may consider appropriate⁷.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the application of the Pollution Prevention and Control Act 1999 to Wales and Scotland see s 5.

2 'Offshore installation' means any structure or other thing (but not a ship) in or under United Kingdom territorial waters, or any waters mentioned in the Pollution Prevention and Control Act 1999 s 7(9)(b) or (c) (ie the sea in any designated area within the meaning of the Continental Shelf Act 1964 (see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 172), and the sea in any area specified under the Petroleum Act 1998 s 10(8) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1678): Pollution Prevention and Control Act 1999 s 7(9)(b), (c)), which is used for the purposes of, or in connection with, the exploration, development or production of petroleum: s 3(2). 'Petroleum' has the meaning given by the Petroleum Act 1998 s 1 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1626); and 'ship' has the same meaning as in the Merchant Shipping Act 1995 (see s 313(1); and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229): Pollution Prevention and Control Act 1999 s 3(2).

3 Such regulations may contain such consequential, incidental, supplementary, transitional or saving provisions as the Secretary of State considers appropriate, and may make different provision for different cases, including different provision in relation to different persons, circumstances, areas or localities: Pollution Prevention and Control Act 1999 s 3(3). The power to make such regulations must be exercised by statutory instrument: s 3(5). No such regulations may be made (whether alone or with other regulations) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 3(6). In exercise of the power under s 3 the Secretary of State has made the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861: see also PARA 617.

4 The Pollution Prevention and Control Act 1999 refers to the Merchant Shipping Act 1995 ss 137-140, but these provisions have been repealed: see now s 108A, Sch 3A; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 686 et seq. As to shipping and pollution see PARA 347 et seq.

5 Pollution Prevention and Control Act 1999 s 3(1).

6 As to the Environment Agency see PARA 68 et seq.

7 Pollution Prevention and Control Act 1999 s 3(4).

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5. AIR QUALITY AND AIR POLLUTION

(1) IN GENERAL

189. Introduction.

The common law has a fairly limited role in regard to air quality and air pollution¹, except in the common law action in nuisance².

However there is a considerable amount of legislation in the area, some of the domestic legislation with a European Union origin³. Traditional air quality concerns, considered below⁴, are mostly grounded in public health and are to be contrasted with more recent concerns about air contamination by greenhouse gases giving rise to global climate change which for the most part is covered elsewhere⁵.

1 Perhaps unlike in the area of water pollution: see PARA 270 et seq. As to the limited role of the common law in regard to contaminated land see PARA 760.

2 This is beyond the scope of this title. However see eg *Wandsworth London Borough Council v Railtrack plc* [2001] EWCA Civ 1236, [2002] QB 756, [2001] Env LR 441; and **NUISANCE** vol 78 (2010) PARAS 118, 155. See generally **NUISANCE**; **TORT** vol 97 (2010) PARA 401.

3 As to European Union legislation see PARA 190.

4 See PARA 191 et seq. As to the impact of air pollution see also integration of pollution control; and PARA 158 et seq.

5 Generally see **FUEL AND ENERGY**. However for briefer, general consideration of legislation such as the Climate Change and Sustainable Energy Act 2006 and the Climate Change Act 2008 and an overview of this less traditional area of law affecting air pollution see PARA 259 et seq.

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(2) LEGISLATION

190. European Union legislation.

There is European Union legislation relating to ambient air quality¹, and setting limit values for concentrations of certain pollutants². Provision is made for monitoring the ozone³, for controlling emissions from various specific sources⁴, and for regulating the composition and content of certain fuels⁵. Reference should also be made to the regime relating to integrated pollution prevention and control⁶.

1 See PARA 9. As to air quality generally in England and Wales see PARA 192 et seq. As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

2 See PARA 10 et seq. See note 1.

3 See PARA 10. As to implementation in England see the Air Quality Standards Regulations 2007, SI 2007/64. As to implementation in Wales see the Air Quality Standards (Wales) Regulations 2007, SI 2007/717. See also the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002, SI 2002/528 (amended by SI 2008/91); and the Ozone-Depleting Substances (Qualifications) Regulations 2009, SI 2009/216.

4 See PARA 10 et seq. As to implementation in England and Wales see eg the Motor Vehicles (Type Approval) Regulations 1980, SI 1980/1182 (amended by SI 2009/2084); the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078; and the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573; and see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and PARA 662 et seq. See further PARA 159; and **CARRIAGE AND CARRIERS; EXPLOSIVES; FUEL AND ENERGY; HEALTH AND SAFETY AT WORK; ROAD TRAFFIC; WATER AND WATERWAYS.**

5 See PARAS 48-49. As to implementation in England and Wales see eg the Motor Fuel (Composition and Content) Regulations 1999, SI 1999/3107; and the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007, SI 2007/79. See further PARA 236; and **FUEL AND ENERGY.**

6 See PARA 159 et seq.

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191. Domestic legislation.

The Clean Air Acts 1956 and 1968 have been consolidated by the Clean Air Act 1993¹. This Act contains provisions regulating the emission of dark smoke from chimneys² and from industrial or trade premises other than from chimneys³, for grit, dust and fume control⁴, for establishing smoke control areas⁵ and for the administration and enforcement of powers as to clean air⁶. Part IV of the Environment Act 1995⁷ introduced a national air quality strategy, and required the Secretary of State to prepare and publish a statement containing policies with respect to the assessment or management of the quality of air⁸. Atmospheric emissions from certain industrial installations fall within the integrated pollution prevention and control regime⁹. More recently the Health Act 2006¹⁰ made provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free¹¹.

1 The Clean Air Act 1993 came into force at the end of the period of three months beginning with the day on which it was passed: see s 68(1), (2) (s 68(2) repealed). The day it was passed was 27 May 1993 and accordingly the Act came into force on 27 August 1993. It applies to England and Wales, and s 30, s 32 (and s 67(3), Sch 6 so far as they relate to the repeal of the Control of Pollution Act 1974 ss 75, 77) extend to Northern Ireland but otherwise the Act does not extend to Northern Ireland: Clean Air Act 1993 s 68(3). Part IV (ss 30-33) and Pt V (ss 34-40), and Pt VII (ss 47-68) so far as relating to those Parts, have effect in their application to the Isles of Scilly with such modifications as the Secretary of State may by order specify: s 65. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

As to transitional provisions see the Clean Air Act 1993 s 67(2), Sch 5.

Part I (ss 1-3), Pt II (ss 4-16) and Pt III (ss 18-29) do not apply to any process which is a prescribed process as from the date which is the determination date for that process: s 41(1). As from a day to be appointed, s 41 is repealed by the Pollution Prevention and Control Act 1999 s 6(2), Sch 3. At the date at which this volume states the law no such day had been appointed. The 'determination date' for a prescribed process is: (1) in the case of a process for which an authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it; and (2) in the case of a process for which an authorisation is refused, the date of the refusal or, on an appeal, of the affirmation of the refusal: Clean Air Act 1993 s 41(2). For these purposes, 'authorisation', 'enforcing authority' and 'prescribed process' have the meanings given in the Environmental Protection Act 1990 s 1 (prospectively repealed) (see PARA 159) and the reference to an appeal is a reference to an appeal under s 15 (see PARA 176): Clean Air Act 1993 s 41(3). As to the prospective repeal of the Environmental Protection Act 1990 Pt I (ss 1-28) see PARA 159 note 2. As to the replacement regime of integrated pollution prevention and control see PARA 186 et seq.

The Clean Air Act 1993 Pts I-III do not apply to any smoke, grit or dust from any railway locomotive engines (see s 43(5); and PARA 216), or from any vessel (see ss 44(6), 46(4); and PARAS 210, 216), or from the combustion of refuse deposited from any mine or quarry to which s 42 applies (see s 42(4); and PARA 238).

Where an activity is subject to regulations under the Pollution Prevention and Control Act 1999 s 2 (regulation of polluting activities) (see PARAS 186-187), the Clean Air Act 1993 Pts I-III do not apply as from the determination date for the activity in question: s 41A(1) (s 41A added by SI 2000/1973). 'Activity' includes (a) a waste operation within the meaning of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 663 note 1); and (b) a mining waste operation within the meaning of those Regulations (see PARA 663 note 1): Clean Air Act 1993 s 41A(4) (added by SI 2007/3538; and amended by SI 2009/1799). The 'determination date' for an activity is: (i) in the case of an activity for which a permit is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it; (ii) in the case of an activity for which a permit is refused, the date of refusal or, on appeal, of the affirmation of the refusal; (iii) in the case of an activity that is an exempt waste operation, the date of the entry on the register maintained under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 2 para 4 (see PARA 663 note 1) of an establishment or undertaking in relation to that operation: Clean Air Act 1993 s 41A(2) (as so added; and amended by SI 2007/3538). For these purposes, 'permit' means a permit under regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARAS 186-187) and the reference to an appeal is a reference to an appeal under those regulations; and 'exempt waste operation' has the meaning

given in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 663 note 1): Clean Air Act 1993 s 41A(3) (as so added; and amended by SI 2007/3538).

2 Ie the Clean Air Act 1993 ss 1, 3: see PARA 214.

3 Ie the Clean Air Act 1993 s 2: see PARA 215.

4 Ie the Clean Air Act 1993 ss 4-16: see PARA 226 et seq.

5 Ie the Clean Air Act 1993 ss 18-29: see PARA 217 et seq.

6 As to control of certain forms of pollution see the Clean Air Act 1993 ss 30-33; and PARAS 236-237. As to information about air pollution see ss 34-40; and PARA 239 et seq. As to special cases see ss 41-46; and PARAS 210-211, 216, 238. As to the power to apply certain provisions to fumes and gases see s 47; and PARA 232. As to the power to give effect to international agreements see s 48; and PARA 207. As to administration and enforcement see ss 49-61; and PARAS 99, 208 et seq. As to the application of certain provisions of the Public Health Act 1936 to the Clean Air Act 1993 see s 62 (amended by the Statute Law (Repeals) Act 1993). As to regulations and orders see the Clean Air Act 1993 s 63; and PARA 207.

7 Ie the Environment Act 1995 Pt IV (ss 80-91): see PARA 192 et seq. Before this legislation, the approach up to the mid 1990s was described as 'the fortuitous sum of a large number of unrelated regulatory decisions and individual choices': Department of Environment Consultation Paper, *Improving Air Quality*, 1994.

8 See PARA 192.

9 See PARA 158 et seq. See also note 1. As to other relevant legislation, eg the Climate Change Act 2008, see PARA 259 et seq; and **FUEL AND ENERGY**.

10 Ie the Health Act 2006 Pt 1 Ch 1 (ss 1-12).

11 See PARA 250 et seq.

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(3) NATIONAL AIR QUALITY STRATEGY

192. National air quality strategy.

The Secretary of State¹ is required to prepare and publish a statement (the 'strategy') containing policies with respect to the assessment or management of the quality of air². The strategy may also contain policies for implementing obligations of the United Kingdom³ under the Community treaties, or international agreements to which the United Kingdom is for the time being a party, so far as relating to the quality of air⁴. The strategy must consist of or include a statement which relates to the whole of Great Britain or two or more statements which between them relate to every part of Great Britain⁵. Without prejudice to the generality of what may be included in the strategy, the strategy must include statements with respect to: (1) standards relating to the quality of air⁶; (2) objectives for the restriction of the levels at which particular substances are present in the air⁷; and (3) measures which are to be taken by local authorities⁸ and other persons for the purpose of achieving those objectives⁹.

The Secretary of State must keep under review his policies with respect to the quality of air and may from time to time modify the strategy¹⁰. In preparing the strategy or any modification¹¹ of it, the Secretary of State must consult: (a) the Environment Agency¹²; (b) such bodies or persons appearing to him to be representative of the interests of local government as he may consider appropriate¹³; (c) such bodies or persons appearing to him to be representative of the interests of industry as he may consider appropriate¹⁴; and (d) such other bodies or persons as he may consider appropriate¹⁵. Before publishing the strategy or any modification of it, the Secretary of State must publish a draft of the proposed strategy or modification, together with notice of a date before which, and an address at which, representations may be made to him concerning the draft so published; and he must take into account any such representations which are duly made and not withdrawn¹⁶.

In discharging its pollution control functions¹⁷, the Environment Agency must have regard to the strategy¹⁸.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Environment Act 1995 s 80(1). Part IV (ss 80-91), with the exception of s 80, does not apply in relation to the Isles of Scilly, although an order may be made providing for the application of any provisions of Pt IV to those Isles: see s 89. At the date at which this volume states the law no such order had been made.

As to *The Air Quality Strategy for England, Scotland and Northern Ireland* (2007 Cm 7169) see the Department for Environment and Rural Affairs website which was, at the date at which this volume states the law, www.defra.gov.uk. As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

3 As to the meaning of 'United Kingdom' see PARA 1 note 2.

4 Environment Act 1995 s 80(2).

5 Environment Act 1995 s 80(3). As to the meaning of 'Great Britain' see PARA 1 note 2.

6 Environment Act 1995 s 80(5)(a).

7 Environment Act 1995 s 80(5)(b).

- 8 As to the meaning of 'local authority' see PARA 99.
- 9 Environment Act 1995 s 80(5)(c).
- 10 Environment Act 1995 s 80(4).
- 11 As to the meaning of 'modification' see PARA 71 note 11.
- 12 Environment Act 1995 s 80(6)(a). The Environment Act 1995 refers to the appropriate new Agency; 'the appropriate new Agency' or 'new Agency' means, in relation to England and Wales, the Environment Agency: ss 94(1), 124(1). As to the Environment Agency see PARA 68 et seq.
- 13 Environment Act 1995 s 80(6)(b).
- 14 Environment Act 1995 s 80(6)(c).
- 15 Environment Act 1995 s 80(6)(d).
- 16 Environment Act 1995 s 80(7).
- 17 For these purposes, 'pollution control functions' in relation to the Environment Agency means the functions conferred on it by or under the enactments specified in the Environment Act 1995 s 5(5) (see PARA 75): s 81(2). 'Functions' includes powers and duties: s 124(1).
- 18 Environment Act 1995 s 81(1). See note 12.

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193. London air quality strategy.

Under Part IX of the Greater London Authority Act 1999¹, the Mayor of London² is required to prepare and publish a London air quality strategy³. The Secretary of State⁴ may give directions to the Mayor about the strategy where it might be detrimental to any area outside Greater London, or if such a direction is necessary for the implementation of a national air quality strategy⁵. Local authorities⁶ must have regard to the London air quality strategy in exercising their functions⁷, and the Mayor may give directions to such authorities in certain circumstances⁸.

1 See the Greater London Authority Act 1999 Pt IX (ss 351-374). As to the operations of these provisions see *R (on the application of Westminster City Council) v Mayor of London*, *R (on the application of Preece) v Mayor of London* [2002] EWHC 2440 (Admin), [2003] LGR 611, [2002] All ER (D) 494 (Jul).

As to Greater London Authority environment reports see the relevant website which was, at the date at which this volume states the law, www.london.gov.uk. As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

2 As to the Mayor of London see PARA 100; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 44 et seq.

3 See the Greater London Authority Act 1999 s 362; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 185.

4 As to the Secretary of State see PARA 58.

5 See the Greater London Authority Act 1999 s 363. As to the national air quality strategy see PARA 192.

6 As to the meaning of 'local authority' see PARA 99; definition applied by the Greater London Authority Act 1999 s 366.

7 See the Greater London Authority Act 1999 s 364; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 185.

8 See the Greater London Authority Act 1999 s 365; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 185.

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194. Local authority reviews of air quality.

Every local authority¹ must from time to time cause a review to be conducted of the quality for the time being, and the likely future quality within the relevant period², of air within the authority's area³. Where a local authority causes such a review to be conducted, it must also cause an assessment to be made of whether air quality standards and objectives⁴ are being achieved, or are likely to be achieved within the relevant period, within the authority's area⁵. If, on such an assessment, it appears that any air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the local authority's area, the local authority must identify any parts of its area in which it appears that those standards or objectives are not likely to be achieved within the relevant period⁶.

1 As to the meaning of 'local authority' see PARA 99.

2 'Relevant period', in the case of any provision of the Environment Act 1995 Pt IV (ss 80-91), means such period as may be prescribed for the purposes of that provision: s 91(1). The relevant period for these purposes is, in relation to an air quality objective, the period beginning with the date on which the Air Quality (England) Regulations 2000, SI 2000/928, came into force (ie 6 April 2000) and ending on a specified date: reg 3(2). As to the specified date see reg 3, Schedule (amended by SI 2002/3043). See, in relation to Wales, the Air Quality (Wales) Regulations 2000, SI 2000/1940 (amended by SI 2002/3182). See also the Air Quality Standards (Wales) Regulations 2007, SI 2007/717.

3 Environment Act 1995 s 82(1). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 'Air quality standards' means standards prescribed by virtue of the Environment Act 1995 s 87(2)(a) (see PARA 200): s 91(1). 'Air quality objectives' means objectives prescribed by virtue of s 87(2)(b) (see PARA 200): s 91(1). As to the objectives prescribed see the Air Quality (England) Regulations 2000, SI 2000/928, reg 4, Schedule (amended by SI 2002/3043). See, in relation to Wales, the Air Quality (Wales) Regulations 2000, SI 2000/1940 (amended by SI 2002/3182). See also the Air Quality Standards (Wales) Regulations 2007, SI 2007/717.

5 Environment Act 1995 s 82(2).

6 Environment Act 1995 s 82(3). Any reference in Part IV to it appearing that any air quality standards or objectives are not likely within the relevant period to be achieved includes a reference to it appearing that those standards or objectives are likely within that period not to be achieved: s 91(2).

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195. Designation of air quality management areas.

Where, as a result of an air quality review¹, it appears that any air quality standards or objectives² are not being achieved, or are not likely within the relevant period³ to be achieved⁴, within the area of a local authority⁵, the local authority may by order designate as an air quality management area (a 'designated area'⁶) any part of its area in which it appears that those standards or objectives are not being achieved, or are not likely to be achieved within the relevant period⁷. Such an order may, as a result of a subsequent air quality review: (1) be varied by a subsequent order; or (2) be revoked by such an order, if it appears on that subsequent air quality review that the air quality standards and objectives are being achieved, and are likely throughout the relevant period to be achieved, within the designated area⁸.

1 'Air quality review' means a review under the Environment Act 1995 s 82 (see PARA 194) or s 85 (see PARA 197): s 91(1).

2 As to the meanings of 'air quality objectives' and 'air quality standards' see PARA 194 note 4.

3 As to the meaning of 'relevant period' see PARA 194 note 2.

4 As to references to air quality standards or objectives not being likely within the relevant period to be achieved see PARA 194 note 6.

5 As to the meaning of 'local authority' see PARA 99.

6 Environment Act 1995 ss 83(1), 91(1).

7 Environment Act 1995 s 83(1). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

8 Environment Act 1995 s 83(2).

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196. Duties of local authorities in relation to designated areas.

Where an order designating an air quality management area¹ comes into operation, the local authority² which made the order must, for the purpose of supplementing such information as it has in relation to the designated area in question, cause an assessment to be made³ of: (1) the quality for the time being, and the likely future quality within the relevant period, of air within the designated area to which the order relates⁴; and (2) the respects (if any) in which it appears that air quality standards or objectives⁵ are not being achieved, or are not likely within the relevant period⁶ to be achieved, within that designated area⁷.

A local authority which is so required to cause an assessment to be made is also under a duty: (a) to prepare, before the expiration of the period of 12 months beginning with the coming into operation of the order designating an air quality management area⁸, a report of the results of that assessment⁹; and (b) to prepare a written plan (an 'action plan'¹⁰) for the exercise by the authority, in pursuit of the achievement of air quality standards and objectives in the designated area, of any powers exercisable by the authority¹¹. An action plan must include a statement of the time or times by or within which the local authority in question proposes to implement each of the proposed measures comprised in the plan¹². A local authority may from time to time revise an action plan¹³.

Where the local authority preparing an action plan or a revision of an action plan is the council of a district in England which is comprised in an area for which there is a county council, and the county council disagrees with the authority about the contents of the proposed action plan or revision of the action plan¹⁴:

- 224 (i) either of them may refer the matter to the Secretary of State¹⁵;
- 225 (ii) on any such reference the Secretary of State may confirm the authority's proposed action plan or revision of the action plan, with or without modifications¹⁶ (whether or not proposed by the county council), or reject it and, if he rejects it, he may also exercise certain powers¹⁷; and
- 226 (iii) the authority may not finally determine the content of the action plan, or the revision of the action plan, except in accordance with his decision on the reference or in pursuance of direction¹⁸.

1 le an order under the Environment Act 1995 s 83: see PARA 195.

2 As to the meaning of 'local authority' see PARA 99.

3 Environment Act 1995 s 84(1). As to the meaning of 'designated area' see PARA 195.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 Environment Act 1995 s 84(1)(a).

5 As to the meanings of 'air quality objectives' and 'air quality standards' see PARA 194 note 4.

6 As to the meaning of 'relevant period' see PARA 194 note 2.

7 Environment Act 1995 s 84(1)(b). As to references to air quality standards or objectives not being likely within the relevant period to be achieved see PARA 194 note 6.

8 le an order under the Environment Act 1995 s 83: see PARA 195.

9 Environment Act 1995 s 84(2)(a).

10 Environment Act 1995 ss 84(2)(b), 91(1).

Section s 84(2)(b) is disapplied in relation to local authorities which have been classified as excellent or 4 star authorities pursuant to an order made under the Local Government Act 2003 s 99(4) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 789): Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005, SI 2005/157, art 8(1) (amended by SI 2009/714). See further the Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005, SI 2005/157, art 8(2)-(6) (amended by SI 2009/714).

11 Environment Act 1995 s 84(2)(b). The plan must be prepared in accordance with ss 85-91 (see PARA 197 et seq): see s 84(2)(b).

12 Environment Act 1995 s 84(3).

13 Environment Act 1995 s 84(4).

14 Environment Act 1995 s 84(5).

15 Environment Act 1995 s 84(5)(a). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

16 As to the meaning of 'modifications' see PARA 71 note 11.

17 Environment Act 1995 s 84(5)(b). The powers referred to in the text are the powers of the Secretary of State under s 85: see PARA 197.

18 Environment Act 1995 s 84(5)(c). The directions referred to in the text are the directions under s 85: see PARA 197.

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197. Reserve powers.

The appropriate authority¹ may conduct or make, or cause to be conducted or made²:

- 227 (1) a review of the quality for the time being, and the likely future quality within the relevant period³, of air within the area of any local authority⁴;
- 228 (2) an assessment of whether air quality standards and objectives⁵ are being achieved, or are likely to be achieved within the relevant period, within the area of a local authority⁶;
- 229 (3) an identification of any parts of the area of a local authority in which it appears that those standards or objectives are not likely to be achieved within the relevant period⁷; or
- 230 (4) an assessment of the respects (if any) in which it appears that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a local authority or within a designated area⁸.

If it appears to the appropriate authority:

- 231 (a) that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a local authority⁹;
- 232 (b) that a local authority has failed to discharge any duty imposed on it under the provisions relating to air quality¹⁰;
- 233 (c) that the actions, or proposed actions, of a local authority in purported compliance with the provisions relating to air quality¹¹ are inappropriate in all the circumstances of the case¹²; or
- 234 (d) that developments in science or technology, or material changes in circumstances, have rendered inappropriate the actions or proposed actions of a local authority in pursuance of the provisions relating to air quality¹³,

the appropriate authority may give directions to the local authority requiring it to take such steps as may be specified in the directions¹⁴. Without prejudice to the generality of this provision, such directions may, in particular, require a local authority¹⁵:

- 235 (i) to cause an air quality review to be conducted¹⁶ in accordance with the directions¹⁷;
- 236 (ii) to cause an air quality review¹⁸ to be conducted afresh, whether in whole or in part, or to be so conducted with such differences as may be specified or described in the directions¹⁹;
- 237 (iii) to make an order designating as an air quality management area²⁰ an area specified in, or determined in accordance with, the directions²¹;
- 238 (iv) to revoke, or modify in accordance with the directions, any order designating an area as an air quality management area²²;
- 239 (v) to prepare in accordance with the directions an action plan for a designated area²³;
- 240 (vi) to modify, in accordance with the directions, any action plan prepared by the authority²⁴; or

241 (vii) to implement, in accordance with the directions, any measures in an action plan²⁵.

The Secretary of State also has power to give directions to local authorities, other than local authorities in Greater London, requiring them to take such steps specified in the directions as he considers appropriate for the implementation of any obligations of the United Kingdom²⁶ under the Community treaties, or any international agreement to which the United Kingdom is for the time being a party, so far as relating to the quality of air²⁷.

It is the duty of a local authority to comply with any direction given to it under the provisions relating to air quality²⁸.

1 'Appropriate authority' means, in relation to local authorities in England and Wales other than local authorities in Greater London, the Secretary of State and, in relation to local authorities in Greater London, the Mayor of London: Environment Act 1995 s 85(1) (amended by the Greater London Authority Act 1999 s 367). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the Mayor of London see PARA 100; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 44 et seq. As to the meaning of 'local authority' see PARA 99. As to the application of the Environment Act 1995 as far as it relates to excellent or 4 star authorities see the Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005, SI 2005/157, art 8 (amended by SI 2009/714).

2 Environment Act 1995 s 85(2). In exercising any function under s 85(2), (3) or (4) or under s 85(5A) (see note 27), the Mayor of London must have regard to any guidance issued by the Secretary of State to local authorities under s 88(1) (see PARA 201): s 85(4B) (added by the Greater London Authority Act 1999 s 367; and amended by SI 2001/3719).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

3 As to the meaning of 'relevant period' see PARA 194 note 2.

4 Environment Act 1995 s 85(2)(a). As to the meaning of 'air quality review' see PARA 195 note 1.

5 As to the meanings of 'air quality objectives' and 'air quality standards' see PARA 194 note 4.

6 Environment Act 1995 s 85(2)(b).

7 Environment Act 1995 s 85(2)(c). As to references to air quality standards or objectives not being likely within the relevant period to be achieved see PARA 194 note 6.

8 Environment Act 1995 s 85(2)(d). As to the meaning of 'designated area' see PARA 195.

9 Environment Act 1995 s 85(3)(a).

10 Environment Act 1995 s 85(3)(b). The duties referred to in the text are duties under Pt IV (ss 80-91): see s 85(3)(b).

11 Ie under the Environment Act 1995 Pt IV.

12 Environment Act 1995 s 85(3)(c).

13 Environment Act 1995 s 85(3)(d). The provisions relating to air quality are the provisions of Pt IV: see s 85(3)(d).

14 Environment Act 1995 s 85(3). See also note 2. The powers of the Mayor of London to give directions under s 85 to a local authority in Greater London may only be exercised after consultation with the local authority concerned: s 85(4A) (added by the Greater London Authority Act 1999 s 367).

Any direction given under the Environment Act 1995 s 85 must be published in such manner as the body or person giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them, and copies of the direction are to be made available to the public; and notice must be given in the London Gazette of the giving of the direction and of where a copy of the direction may be obtained: s 85(6). The Mayor of London must send a copy of any direction he gives under s 85 to the Secretary of State: s 85(6A) (added by the Greater London Authority Act 1999 s 367).

- 15 Environment Act 1995 s 85(4). See also note 2.
- 16 Ie under the Environment Act 1995 s 82: see PARA 194.
- 17 Environment Act 1995 s 85(4)(a).
- 18 Ie under the Environment Act 1995 s 82: see PARA 194.
- 19 Environment Act 1995 s 85(4)(b).
- 20 Ie under the Environment Act 1995 s 83: see PARA 195.
- 21 Environment Act 1995 s 85(4)(c).
- 22 Environment Act 1995 s 85(4)(d). The order referred to in the text is an order under s 83: see PARA 195.
- 23 Environment Act 1995 s 85(4)(e). As to the meaning of 'action plan' see PARA 196.
- 24 Environment Act 1995 s 85(4)(f).
- 25 Environment Act 1995 s 85(4)(g).
- 26 As to the meaning of 'United Kingdom' see PARA 1 note 2.
- 27 Environment Act 1995 s 85(5) (amended by the Greater London Authority Act 1999 s 367). The Mayor of London also has the same power to give directions to local authorities in Greater London as the Secretary of State has under the Environment Act 1995 s 85(5) in relation to other local authorities: s 85(5A) (added by SI 2001/3719). See note 2.
- 28 Environment Act 1995 s 85(7). The provisions relating to air quality are the provisions of Pt IV: see s 85(7).

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198. Functions of county councils for areas for which there are district councils.

The county council may make recommendations to a district council with respect to the carrying out of: (1) any particular air quality review¹; (2) any particular assessment of air quality or whether air quality standards or objectives are being achieved²; or (3) the preparation of any particular action plan or revision of an action plan³, and the district council must take into account any such recommendations⁴.

Where a district council is preparing an action plan, the county council must, within the relevant period⁵, submit to the district council proposals for the exercise (so far as relating to the designated area⁶) by the county council, in pursuit of the achievement of air quality standards and objectives, of any powers exercisable by the county council⁷. Where the county council submits such proposals to a district council, it must also submit a statement of the time or times by or within which it proposes to implement each of the proposals⁸. An action plan must include a statement of any such proposals submitted⁹ and any time or times set out in the statement submitted¹⁰.

If it appears to the Secretary of State¹¹:

- 242 (a) that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a district council¹²;
- 243 (b) that the county council has failed to discharge any duty imposed on it in relation to air quality¹³;
- 244 (c) that the actions, or proposed actions, of the county council in purported compliance with the provisions relating to air quality¹⁴ are inappropriate in all the circumstances of the case¹⁵; or
- 245 (d) that developments in science or technology, or material changes in circumstances, have rendered inappropriate the actions or proposed actions of the county council in pursuance of the provisions relating to air quality¹⁶,

the Secretary of State may give directions to the county council requiring it to take such steps as may be specified in the directions¹⁷.

The Secretary of State also has power to give directions to county councils for areas for which there are district councils requiring them to take such steps specified in the directions as he considers appropriate for the implementation of any obligations of the United Kingdom¹⁸ under the Community treaties, or any international agreement to which the United Kingdom is for the time being a party, so far as relating to the quality of air¹⁹.

It is the duty of a county council for an area for which there are district councils to comply with any direction given to it²⁰.

1 Environment Act 1995 s 86(2)(a). As to the meaning of 'air quality review' see PARA 195 note 1.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

2 Environment Act 1995 s 86(2)(b). The assessments referred to in the text are assessments under s 82 (see PARA 194) or s 84 (see PARA 196): see s 86(2)(b). As to the meanings of 'air quality objectives' and 'air quality standards' see PARA 194 note 4.

3 Environment Act 1995 s 86(2)(c). As to the meaning of 'action plan' see PARA 196.

4 Environment Act 1995 s 86(2). Section 86 applies in any case where a district in England for which there is a district council is comprised in an area for which there is a county council, and for these purposes: (1) any reference to the county council is a reference to the council of that area; and (2) any reference to a district council is a reference to the council of a district comprised in that area: s 86(1).

5 'Relevant period', in the case of any provision of the Environment Act 1995 Pt IV (ss 80-91), means such period as may be prescribed for the purposes of that provision: s 91(1). The relevant period for these purposes means, in relation to the preparation of an action plan, the period of nine months beginning with the date on which the district council preparing the action plan first consults the relevant county council in relation to the plan pursuant to s 90, Sch 11 para 1(2)(e) (see PARA 202): Air Quality (England) Regulations 2000, SI 2000/928, reg 3(1). See, in relation to Wales, the Air Quality (Wales) Regulations 2000, SI 2000/1940, reg 3.

6 As to the meaning of 'designated area' see PARA 195.

7 Environment Act 1995 s 86(3).

8 Environment Act 1995 s 86(4).

9 Ie under the Environment Act 1995 s 86(3): see the text and note 7.

10 Environment Act 1995 s 86(5). The reference in the text is a reference to the times set out in the statement submitted under s 86(4) (see the text and note 8): see s 86(5).

11 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

12 Environment Act 1995 s 86(6)(a). As to references to air quality standards or objectives not being likely within the relevant period to be achieved see PARA 194 note 6.

13 Environment Act 1995 s 86(6)(b). The duties referred to in the text are the duties imposed under Pt IV.

14 Ie the Environment Act 1995 Pt IV.

15 Environment Act 1995 s 86(6)(c).

16 Environment Act 1995 s 86(6)(d). The provisions relating to air quality are the provisions of Pt IV.

17 Environment Act 1995 s 86(6). Without prejudice to the generality of s 86(6), such directions may, in particular, require the county council: (1) to submit, in accordance with the directions, proposals pursuant to s 86(3) (see the text and note 7) or a statement pursuant to s 86(4) (see the text and note 8); (2) to modify, in accordance with the directions, any proposals or statement submitted by the county council pursuant to s 86(3) or s 86(4); (3) to submit any proposals or statement so modified to the district council in question pursuant to s 86(3) or s 86(4); or (4) to implement, in accordance with the directions, any measures included in an action plan: s 86(7).

Any direction given under s 86 must be published in such manner as the Secretary of State considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them, and copies of the direction must be made available to the public; and notice of the giving of the direction, and of where a copy of the direction may be obtained, must be given in the London Gazette: s 86(9).

18 As to the meaning of 'United Kingdom' see PARA 1 note 2.

19 Environment Act 1995 s 86(8). As to directions see note 17.

20 Environment Act 1995 s 86(10). The directions referred to in the text are directions under Pt IV: see s 86(10).

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199. Functions exercisable by Mayor of London.

Where a local authority¹ in Greater London is preparing an action plan², the Mayor of London³ must, within the relevant period⁴, submit to the authority proposals for the exercise (so far as relating to the designated area⁵) by the Mayor, in pursuit of the achievement of air quality standards and objectives⁶, of any powers exercisable by the Mayor⁷. Where the Mayor submits such proposals to a local authority, he must also submit a statement of the time or times by or within which he proposes to implement each of the proposals⁸. An action plan must include a statement of any such proposals submitted⁹ and any time or times set out in the statement submitted¹⁰.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'action plan' see PARA 196.

3 As to the Mayor of London see PARA 100; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 44 et seq.

4 As to the meaning of 'relevant period' see PARA 194 note 2.

5 As to the meaning of 'designated area' see PARA 195.

6 As to the meanings of 'air quality objectives' and 'air quality standards' see PARA 194 note 4.

7 Environment Act 1995 s 86A(1) (s 86A added by the Greater London Authority Act 1999 s 368). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

8 Environment Act 1995 s 86A(2) (as added: see note 7).

9 I.e. proposals submitted under the Environment Act 1995 s 86A(1): see the text and notes 1-7.

10 Environment Act 1995 s 86A(3) (as added: see note 7). The reference in the text is a reference to times set out in a statement submitted under s 86A(2): see the text and note 8.

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200. Regulations for the purposes of the provisions relating to air quality.

Regulations¹ may make provision: (1) for, or in connection with, implementing the air quality strategy²; (2) for, or in connection with, implementing obligations of the United Kingdom³ under the Community treaties, or international agreements to which the United Kingdom is for the time being a party, so far as relating to the quality of air⁴; or (3) otherwise with respect to the assessment or management of the quality of air⁵. Such regulations may⁶ make provision:

- 246 (a) prescribing standards relating to the quality of air⁷;
- 247 (b) prescribing objectives for the restriction of the levels at which particular substances are present in the air⁸;
- 248 (c) conferring powers or imposing duties on local authorities⁹;
- 249 (d) for or in connection with authorising local authorities (whether by agreements or otherwise) to exercise any functions¹⁰ of a Minister of the Crown on his behalf, directing that functions of a Minister of the Crown are exercisable concurrently with local authorities, or transferring functions of a Minister of the Crown to local authorities¹¹;
- 250 (e) prohibiting or restricting, or for or in connection with prohibiting or restricting the carrying on of prescribed activities, or the access of prescribed vehicles or mobile equipment to prescribed areas, whether generally or in prescribed circumstances¹²;
- 251 (f) for or in connection with the designation of air quality management areas by orders made by local authorities in such cases or circumstances not falling within the provision relating to the designation of air quality management areas¹³ as may be prescribed¹⁴;
- 252 (g) for the application, with or without modifications¹⁵, of any provisions relating to air quality¹⁶ in relation to areas designated by virtue of head (f) above or in relation to orders made by virtue of it¹⁷;
- 253 (h) with respect to air quality reviews¹⁸, assessments under the provisions relating to air quality¹⁹, orders designating air quality management areas²⁰, or action plans²¹;
- 254 (i) prescribing measures which are to be adopted by local authorities (whether in action plans or otherwise) or other persons in pursuance of the achievement of air quality standards or objectives²²;
- 255 (j) for or in connection with the communication to the public of information relating to quality for the time being, or likely future quality, of the air²³;
- 256 (k) for or in connection with the obtaining by local authorities from any person of information which is reasonably necessary for the discharge of functions conferred or imposed on them under or by virtue of the provisions relating to air quality²⁴;
- 257 (l) for or in connection with the recovery by a local authority from prescribed persons in prescribed circumstances, and in such manner as may be prescribed, of costs incurred by the authority in discharging functions conferred or imposed on the authority under or by virtue of the provisions relating to air quality²⁵;
- 258 (m) for a person who contravenes, or fails to comply with, any prescribed provision of the regulations to be guilty of an offence and liable on summary conviction to a penalty²⁶;

- 259 (n) for or in connection with arrangements under which a person may discharge any liability to conviction for a prescribed offence by payment of a penalty of a prescribed amount²⁷;
- 260 (o) for or in connection with appeals against determinations or decisions made, notices given or served, or other things done under or by virtue of the regulations²⁸.

In determining: (i) any appeal against, or reference or review of, a decision of a local authority under or by virtue of regulations under the provisions relating to air quality²⁹; or (ii) any application transmitted from a local authority under or by virtue of any such regulations³⁰, the body or person making the determination is bound by any direction given by a Minister of the Crown to the local authority to the same extent as the local authority³¹.

The provisions of any regulations³² may include: (A) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed³³; (B) different provision for different cases, including different provision in relation to different persons, circumstances, areas or localities³⁴; and (c) such supplemental, consequential, incidental or transitional provision (including provision amending any enactment or any instrument made under any enactment) as the Secretary of State considers appropriate³⁵. Nothing in regulations under the provisions relating to air quality³⁶ authorises any person other than a constable in uniform to stop a vehicle on any road³⁷.

Before making any regulations under the provisions relating to air quality³⁸, the Secretary of State must consult the Environment Agency, such bodies or persons appearing to him to be representative of the interests of local government as he may consider appropriate, such bodies or persons appearing to him to be representative of the interests of industry as he may consider appropriate, and such other bodies or persons as he may consider appropriate³⁹.

1 'Regulations' means regulations made by the Secretary of State: Environment Act 1995 s 91(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the regulations that have been made see the Air Quality (England) Regulations 2000, SI 2000/928 (amended by SI 2002/3043); and the Air Quality (Wales) Regulations 2000, SI 2000/1940 (amended by SI 2002/3182). See also the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002, SI 2002/1808; and the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Wales) Regulations 2003, SI 2003/300. As to the procedure applicable to proceedings for the recovery of certain increased fixed penalties under the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002, SI 2002/1808, see CPR Pt 75 (added by SI 2002/2058; and amended by SI 2005/3515; and SI 2008/3327); and *Practice Direction--Traffic Enforcement* PD 75.

Any power conferred by the Environment Act 1995 Pt IV (ss 80-91) to make regulations is exercisable by statutory instrument, and no statutory instrument containing regulations under Pt IV may be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: s 87(8). If, apart from s 87(9), the draft of an instrument containing regulations under Pt IV would be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it may proceed in that House as if it were not such an instrument: s 87(9).

2 Environment Act 1995 s 87(1)(a). As to the strategy see PARA 192.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

3 As to the meaning of 'United Kingdom' see PARA 1 note 2.

4 Environment Act 1995 s 87(1)(b).

5 Environment Act 1995 s 87(1)(c).

6 Ie without prejudice to the generality of the Environment Act 1995 s 87(1): see the text and notes 1-5.

7 Environment Act 1995 s 87(2)(a).

8 Environment Act 1995 s 87(2)(b). As to the objectives prescribed see the Air Quality (England) Regulations 2000, SI 2000/928, reg 4, Schedule (amended by SI 2002/3043).

9 Environment Act 1995 s 87(2)(c). As to the meaning of 'local authority' see PARA 99.

10 As to the meaning of 'functions' see PARA 192 note 17.

11 Environment Act 1995 s 87(2)(d).

12 Environment Act 1995 s 87(2)(e). 'Prescribed' means prescribed, or of a description prescribed, by or under regulations: s 91(1).

13 Ie the Environment Act 1995 s 83: see PARA 195.

14 Environment Act 1995 s 87(2)(f).

15 As to the meaning of 'modifications' see PARA 71 note 11.

16 Ie the Environment Act 1995 Pt IV.

17 Environment Act 1995 s 87(2)(g).

18 As to the meaning of 'air quality review' see PARA 195 note 1.

19 Ie the Environment Act 1995 Pt IV.

20 See PARA 195.

21 Environment Act 1995 s 87(2)(h). As to the meaning of 'action plan' see PARA 196. Without prejudice to the generality of s 87(2)(h), the provision that may be made by virtue of it includes provision for or in connection with any of the following:

58 (1) the scope or form of a review or assessment (s 87(3)(a));

59 (2) the scope, content or form of an action plan (s 87(3)(b));

60 (3) the time at which, period within which, or manner in which a review or assessment is to be carried out or an action plan is to be prepared (s 87(3)(c));

61 (4) the methods to be employed in carrying out reviews or assessments or in monitoring the effectiveness of action plans (s 87(3)(d));

62 (5) the factors to be taken into account in preparing action plans (s 87(3)(e));

63 (6) the actions which must be taken by local authorities or other persons in consequence of reviews, assessments or action plans (s 87(3)(f));

64 (7) requirements for consultation (s 87(3)(g));

65 (8) the treatment of representations or objections duly made (s 87(3)(h));

66 (9) the publication of, or the making available to the public of, or of copies of, the results, or reports of the results, of reviews or assessments or orders or action plans (s 87(3)(j));

67 (10) requirements for: (a) copies of any such reports, orders or action plans; or (b) prescribed information, in such form as may be prescribed, relating to reviews or assessments to be sent to the Secretary of State or to the Environment Agency (see PARA 192 note 12) (s 87(3)(k)).

22 Environment Act 1995 s 87(2)(j). As to the meanings of 'air quality standards' and 'air quality objectives' see PARA 194 note 4.

23 Environment Act 1995 s 87(2)(k).

24 Environment Act 1995 s 87(2)(l). The provisions relating to air quality referred to in the text are the provisions of Pt IV: see s 87(2)(l).

25 Environment Act 1995 s 87(2)(m). The provisions relating to air quality referred to in the text are the provisions of Pt IV: see s 87(2)(m).

26 Environment Act 1995 s 87(2)(n). The penalty is a fine not exceeding level 5 on the standard scale or such lower level on that scale as may be prescribed in relation to the offence: s 87(2)(n). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

27 Environment Act 1995 s 87(2)(o). See also PARA 206.

28 Environment Act 1995 s 87(2)(p).

29 Environment Act 1995 s 87(4)(a). The provisions relating to air quality referred to in the text are the provisions of Pt IV: s 87(4)(a).

30 Environment Act 1995 s 87(4)(b).

31 Environment Act 1995 s 87(4).

32 Ie regulations under the Environment Act 1995 Pt IV.

33 Environment Act 1995 s 87(5)(a).

34 Environment Act 1995 s 87(5)(b).

35 Environment Act 1995 s 87(5)(c).

36 Ie the Environment Act 1995 Pt IV.

37 Environment Act 1995 s 87(6).

38 Ie the Environment Act 1995 Pt IV. See PARA 192 note 12.

39 Environment Act 1995 s 87(7).

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201. Guidance for the purposes of the provisions relating to air quality.

The Secretary of State¹ may issue guidance to local authorities² with respect to, or in connection with, the exercise of any of the powers conferred, or the discharge of any of the duties imposed, on those authorities by or under the provisions relating to air quality³. A local authority, in carrying out any of its functions⁴ under or by virtue of such provisions, must have regard to any guidance so issued by the Secretary of State⁵. This provision applies in relation to county councils for areas for which there are district councils as it applies in relation to local authorities⁶.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'local authority' see PARA 99.

3 Environment Act 1995 s 88(1). The provisions relating to air quality referred to in the text are the provisions of Pt IV (ss 80-91): see s 88(1).

As to the Secretary of State's guidance on air quality see the Department for Environment, Food and Rural Affairs website which was, at the date at which this volume states the law, www.defra.gov.uk. As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 As to the meaning of 'functions' see PARA 192 note 17.

5 Environment Act 1995 s 88(2).

6 Environment Act 1995 s 88(3).

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202. Consultation requirements.

A local authority¹ in carrying out its functions² in relation to any air quality review³, any assessment of air quality or whether air quality standards or objectives are being achieved⁴, or the preparation of an action plan⁵ or any revision of an action plan, must consult certain persons⁶. Those persons are:

- 261 (1) the Secretary of State⁷;
- 262 (2) the Environment Agency⁸;
- 263 (3) the highway authority for any highway in the area to which the review or, as the case may be, the action plan or revision relates⁹;
- 264 (4) every local authority whose area is contiguous to the authority's area¹⁰;
- 265 (5) any county council in England whose area consists of or includes the whole or any part of the authority's area¹¹;
- 266 (6) any national park authority¹² for a national park whose area consists of or includes the whole or any part of the authority's area¹³;
- 267 (7) such public authorities exercising functions in, or in the vicinity of, the authority's area as the local authority may consider appropriate¹⁴;
- 268 (8) such bodies appearing to the local authority to be representative of persons with business interests in the area to which the review or action plan in question relates as the authority may consider appropriate¹⁵;
- 269 (9) such other bodies or persons as the local authority considers appropriate¹⁶.

Certain local authorities¹⁷ must also consult the Mayor of London¹⁸.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'functions' see PARA 192 note 17.

3 As to the meaning of 'air quality review' see PARA 195 note 1.

4 The assessments under the Environment Act 1995 s 82 (see PARA 194) or s 84 (see PARA 196): see s 90, Sch 11 para 1(1). As to the meanings of 'air quality objectives' and 'air quality standards' see PARA 194 note 4.

5 As to the meaning of 'action plan' see PARA 196.

6 Environment Act 1995 Sch 11 para 1(1). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

7 Environment Act 1995 Sch 11 para 1(2)(a). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

8 Environment Act 1995 Sch 11 para 1(2)(b). See PARA 192 note 12.

9 Environment Act 1995 Sch 11 para 1(2)(c). As to highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 49 et seq.

10 Environment Act 1995 Sch 11 para 1(2)(d).

11 Environment Act 1995 Sch 11 para 1(2)(e).

12 For these purposes, 'national park authority' means a national park authority established under the Environment Act 1995 s 63 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq) which has become the local planning authority for the national park in question: Sch 11 para 3 (amended by s 120, Sch 24).

13 Environment Act 1995 Sch 11 para 1(2)(f).

14 Environment Act 1995 Sch 11 para 1(2)(g).

15 Environment Act 1995 Sch 11 para 1(2)(h).

16 Environment Act 1995 Sch 11 para 1(2)(j).

17 The local authorities specified are: (1) any local authority in Greater London; (2) any local authority whose area is contiguous to the area of Greater London: Environment Act 1995 Sch 11 para 1(2A) (added by the Greater London Authority Act 1999 s 369).

18 Environment Act 1995 Sch 11 para 1(2B) (added by the Greater London Authority Act 1999 s 369). As to the Mayor of London see PARA 100; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 44 et seq.

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203. Exchange of information with county councils in England.

It is the duty of the county council to provide a district council with all such information as is reasonably requested by the district council for purposes connected with the carrying out of its functions¹ under or by virtue of the provisions relating to air quality².

It is the duty of a district council to provide the county council with all such information as is reasonably requested by the county council for purposes connected with the carrying out of any of its functions relating to the assessment or management of the quality of air³.

Information so provided to a district council or county council⁴ must be provided in such form and in such manner and at such times as the district council or, as the case may be, the county council may reasonably require⁵. A council which provides such information⁶ is entitled to recover the reasonable cost of doing so from the council which requested the information⁷. The information which a council may be required to provide under these provisions⁸ includes information which, although it is not in the possession of the council or would not otherwise come into the possession of the council, is information which it is reasonable to require the council to obtain⁹.

1 As to the meaning of 'functions' see PARA 192 note 17.

2 Environment Act 1995 s 90, Sch 11 para 2(2). The provisions relating to air quality referred to in the text are the provisions of Pt IV (ss 80-91): see Sch 11 para 2(2). Schedule 11 para 2 applies in any case where a district in England for which there is a district council is comprised in an area for which there is a county council; and, for these purposes, any reference to the county council is a reference to the council of that area and any reference to a district council is a reference to the council of a district comprised in that area: Sch 11 para 2(1).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

3 Environment Act 1995 Sch 11 para 2(3).

4 Ie under the Environment Act 1995 Sch 11 para 2(2), (3): see the text and notes 2-3.

5 Environment Act 1995 Sch 11 para 2(4).

6 Ie under the Environment Act 1995 Sch 11 para 2(2), (3): see the text and notes 2-3.

7 Environment Act 1995 Sch 11 para 2(5).

8 Ie under the Environment Act 1995 Sch 11 para 2.

9 Environment Act 1995 Sch 11 para 2(6).

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204. Joint exercise of local authority functions.

The appropriate authority¹ may give directions to any two or more local authorities² requiring them to exercise the power to discharge functions jointly³ in relation to air quality functions⁴ in accordance with the directions⁵. The appropriate authority may give directions to a local authority requiring it: (1) not to exercise those powers⁶; or (2) not to exercise those powers in a manner specified in the directions⁷, in relation to air quality functions⁸. Where two or more local authorities have exercised those powers in relation to air quality functions, the appropriate authority may give them directions requiring them to revoke, or modify in accordance with the directions, the arrangements which they have made⁹.

1 For these purposes, 'appropriate authority' means in relation to England and Wales, the Secretary of State: Environment Act 1995 s 90, Sch 11 para 3(4)(a). As to the Secretary of State see PARA 58. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'local authority' see PARA 99.

3 I.e. the exercise of the power conferred by the Local Government Act 1972 s 101(5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 380): see the Environment Act 1995 Sch 11 para 3(1)(a).

4 I.e. functions under or by virtue of the Environment Act 1995 Pt IV (ss 80-91). As to the meaning of 'functions' see PARA 192 note 17.

5 Environment Act 1995 Sch 11 para 3(1). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

6 Environment Act 1995 Sch 11 para 3(2)(a).

7 Environment Act 1995 Sch 11 para 3(2)(b).

8 Environment Act 1995 Sch 11 para 3(2).

9 Environment Act 1995 Sch 11 para 3(3).

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205. Public access to information about air quality.

It is the duty of every local authority¹: (1) to secure that there is available at all reasonable times for inspection by the public free of charge a copy of each of certain documents²; and (2) to afford to members of the public facilities for obtaining copies of those documents on payment of a reasonable charge³.

The documents mentioned in head (1) above are:

- 270 (a) a report of the results of any air quality review⁴ which the authority has caused to be conducted⁵;
- 271 (b) a report of the results of any assessment which the authority has caused to be made assessing air quality or whether air quality standards or objectives are being achieved⁶;
- 272 (c) any order made by the authority designating an air quality management area⁷;
- 273 (d) any action plan⁸ prepared by the authority⁹;
- 274 (e) any proposals or statements submitted to the authority¹⁰;
- 275 (f) any directions given to the authority under the provisions relating to air quality¹¹;
- 276 (g) in certain cases¹², any directions given to the county council under the provisions relating to air quality¹³.

1 As to the meaning of 'local authority' see PARA 99.

2 Environment Act 1995 s 90, Sch 11 para 4(1)(a). As to the documents mentioned see heads (a)-(g) in the text.

3 Environment Act 1995 Sch 11 para 4(1)(b). As to environmental information generally see PARA 55. As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 As to the meaning of 'air quality review' see PARA 195 note 1.

5 Environment Act 1995 Sch 11 para 4(2)(a).

6 Environment Act 1995 Sch 11 para 4(2)(b). The assessments referred to in the text are assessments under s 82 (see PARA 194) or s 84 (see PARA 196): see Sch 11 para 4(2)(b). As to the meanings of 'air quality objectives' and 'air quality standards' see PARA 194 note 4.

7 Environment Act 1995 Sch 11 para 4(2)(c). The order referred to in the text is an order under s 83 (see PARA 195): see Sch 11 para 4(2)(c).

8 As to the meaning of 'action plan' see PARA 196.

9 Environment Act 1995 Sch 11 para 4(2)(d).

10 Environment Act 1995 Sch 11 para 4(2)(e). The proposals or statements mentioned in the text are those submitted pursuant to s 86(3) or s 86(4) (see PARA 198): see Sch 11 para 4(2)(e).

11 Environment Act 1995 Sch 11 para 4(2)(f). The provisions relating to air quality referred to in the text are the provisions of Pt IV (ss 80-91): see Sch 11 para 4(2)(f).

12 le where the Environment Act 1995 s 86 applies: see PARA 198 note 4.

13 Environment Act 1995 Sch 11 para 4(2)(g). The provisions relating to air quality referred to in the text are the provisions of Pt IV: see Sch 11 para 4(2)(g).

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206. Fixed penalty offences.

Regulations¹ may, in particular, make provision²:

- 277 (1) for the qualifications, appointment or authorisation of persons who are to issue fixed penalty notices³;
- 278 (2) for the offences in connection with which, the cases or circumstances in which, the time or period at or within which, or the manner in which fixed penalty notices may be issued⁴;
- 279 (3) prohibiting the institution, before the expiration of the period for paying⁵ the fixed penalty⁶, of proceedings against a person for an offence in connection with which a fixed penalty notice has been issued⁷;
- 280 (4) prohibiting the conviction of a person for an offence in connection with which a fixed penalty notice has been issued if the fixed penalty is paid before the expiration of the period for paying it⁸;
- 281 (5) entitling, in prescribed cases, a person to whom a fixed penalty notice is issued to give, within a prescribed period, notice requesting a hearing in respect of the offence to which the fixed penalty notice relates⁹;
- 282 (6) for the amount of the fixed penalty to be increased by a prescribed amount in any case where the person liable to pay the fixed penalty fails to pay it before the expiration of the period for paying it, without having given notice requesting a hearing in respect of the offence to which the fixed penalty notice relates¹⁰;
- 283 (7) for or in connection with the recovery of an unpaid fixed penalty as a fine or as a civil debt or as if it were a sum payable under a county court order¹¹;
- 284 (8) for or in connection with execution or other enforcement in respect of an unpaid fixed penalty by prescribed persons¹²;
- 285 (9) for a fixed penalty notice, and any prescribed proceedings or other prescribed steps taken by reference to the notice, to be rendered void in prescribed cases where a person makes a prescribed statutory declaration, and for the consequences of any notice, proceedings or other steps being so rendered void (including extension of any time limit for instituting criminal proceedings)¹³;
- 286 (10) for or in connection with the extension, in prescribed cases or circumstances, by a prescribed person of the period for paying a fixed penalty¹⁴;
- 287 (11) for or in connection with the withdrawal, in prescribed circumstances, of a fixed penalty notice, including¹⁵: (a) repayment of any amount paid by way of fixed penalty in pursuance of a fixed penalty notice which is withdrawn¹⁶; and (b) prohibition of the institution or continuation of proceedings for the offence in connection with which the withdrawn notice was issued¹⁷;
- 288 (12) for or in connection with the disposition of sums received by way of fixed penalty¹⁸;
- 289 (13) for a certificate purporting to be signed by or on behalf of a prescribed person and stating either: (a) that payment of a fixed penalty was, or (as the case may be) was not, received on or before a date specified in the certificate¹⁹; or (b) that an envelope containing an amount sent by post in payment of a fixed penalty was marked as posted on a date specified in the certificate²⁰, to be received as evidence of the matters so stated and to be treated, without further proof, as being so signed unless the contrary is shown²¹;

- 290 (14) requiring a fixed penalty notice to give such reasonable particulars of the circumstances alleged to constitute the fixed penalty offence to which the notice relates as are necessary for giving reasonable information of the offence and to state²²: (a) the monetary amount of the fixed penalty which may be paid²³; (b) the person to whom, and the address at which, the fixed penalty may be paid and any correspondence relating to the fixed penalty notice may be sent²⁴; (c) the method or methods by which payment of the fixed penalty may be made²⁵; (d) the period for paying the fixed penalty²⁶; (e) the consequences of the fixed penalty not being paid before the expiration of that period²⁷;
- 291 (15) similar to any provision made by the provision relating to statements by constables in fixed penalty cases²⁸;
- 292 (16) for presuming, in any proceedings, that any document of a prescribed description purporting to have been signed by a person to whom a fixed penalty notice has been issued has been signed by that person²⁹;
- 293 (17) requiring or authorising a fixed penalty notice to contain prescribed information relating to, or for the purpose of facilitating, the administration of the fixed penalty system³⁰;
- 294 (18) with respect to the giving of fixed penalty notices, including, in particular, provision with respect to the methods by which, the officers, servants or agents by, to or on whom, and the places at which, fixed penalty notices may be given by, or served on behalf of, a prescribed person³¹;
- 295 (19) prescribing the method or methods by which fixed penalties may be paid³²;
- 296 (20) for or with respect to the issue of prescribed documents to persons to whom fixed penalty notices are or have been given³³;
- 297 (21) for a fixed penalty notice to be treated for prescribed purposes as if it were an information or summons or any other document of a prescribed description³⁴.

The provision that may be made by regulations prescribing fixed penalty offences includes provision for an offence to be a fixed penalty offence only if it is committed in such circumstances or manner as may be prescribed or except if it is committed in such circumstances or manner as may be prescribed³⁵.

Regulations may provide for any offence which is a fixed penalty offence to cease to be such an offence³⁶. An offence which, in consequence of regulations so made³⁷, has ceased to be a fixed penalty offence is eligible to be prescribed as such an offence again³⁸.

Regulations may also make provision for such exceptions, limitations and conditions as the Secretary of State³⁹ considers necessary or expedient⁴⁰.

1 For these purposes, 'regulations' means regulations under or by virtue of the Environment Act 1995 s 87(2) (o) (see PARA 200); s 90, Sch 11 para 5(6). As to the regulations that have been made see the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002, SI 2002/1808; and the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Wales) Regulations 2003, SI 2003/300. As to the procedure applicable to proceedings for the recovery of certain increased fixed penalties under the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002, SI 2002/1808, see CPR Pt 75 (added by SI 2002/2058; and amended by SI 2005/3515; and SI 2008/3327); and *Practice Direction--Traffic Enforcement* PD 75.

2 Environment Act 1995 Sch 11 para 5(1). This provision is expressed to be without prejudice to the generality of s 87(2)(o) (see PARA 200): see Sch 11 para 5(1).

Certain person or indorsements are specified for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW**. Reference should also be made to relevant websites which were, at the date at which this volume states the law, www.bis.gov.uk; and www.defra.gov.uk.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

3 Environment Act 1995 Sch 11 para 5(1)(a). For these purposes, 'fixed penalty notice' means a notice offering a person an opportunity to discharge any liability to conviction for a fixed penalty offence by payment of a penalty of a prescribed amount: Sch 11 para 5(6). For these purposes, 'fixed penalty offence' means, subject to Sch 11 para 5(2) (see PARA 203), any offence (whether under or by virtue of Pt IV (ss 80-91) or any other enactment) which is for the time being prescribed as a fixed penalty offence: Sch 11 para 5(6). 'Prescribed' means prescribed, or of a description prescribed, by or under regulations: s 91(1). See note 1.

4 Environment Act 1995 Sch 11 para 5(1)(b).

5 For these purposes, 'period for paying', in relation to any fixed penalty, means such period as may be prescribed for the purpose: Environment Act 1995 Sch 11 para 5(6).

6 For these purposes, 'fixed penalty' means a penalty of such amount as may be prescribed (whether by being specified in, or made calculable under, regulations): Environment Act 1995 Sch 11 para 5(6).

7 Environment Act 1995 Sch 11 para 5(1)(c).

8 Environment Act 1995 Sch 11 para 5(1)(d).

9 Environment Act 1995 Sch 11 para 5(1)(e).

10 Environment Act 1995 Sch 11 para 5(1)(f).

11 Environment Act 1995 Sch 11 para 5(1)(g).

12 Environment Act 1995 Sch 11 para 5(1)(h).

13 Environment Act 1995 Sch 11 para 5(1)(j).

14 Environment Act 1995 Sch 11 para 5(1)(k).

15 Environment Act 1995 Sch 11 para 5(1)(l).

16 Environment Act 1995 Sch 11 para 5(1)(l)(i).

17 Environment Act 1995 Sch 11 para 5(1)(l)(ii).

18 Environment Act 1995 Sch 11 para 5(1)(m).

19 Environment Act 1995 Sch 11 para 5(1)(n)(i).

20 Environment Act 1995 Sch 11 para 5(1)(n)(ii).

21 Environment Act 1995 Sch 11 para 5(1)(n).

22 Environment Act 1995 Sch 11 para 5(1)(o).

23 Environment Act 1995 Sch 11 para 5(1)(o)(i).

24 Environment Act 1995 Sch 11 para 5(1)(o)(ii).

25 Environment Act 1995 Sch 11 para 5(1)(o)(iii).

26 Environment Act 1995 Sch 11 para 5(1)(o)(iv).

27 Environment Act 1995 Sch 11 para 5(1)(o)(v).

28 Environment Act 1995 Sch 11 para 5(1)(p). The provision relating to statements by constables referred to in the text is the Road Traffic Offenders Act 1988 s 79 (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1121): see the Environment Act 1995 Sch 11 PARA 5(1)(p).

29 Environment Act 1995 Sch 11 para 5(1)(q).

30 Environment Act 1995 Sch 11 para 5(1)(r). For these purposes, 'fixed penalty system' means the system implementing regulations made under or by virtue of s 87(2)(o) (see PARA 200): see Sch 11 para 5(1)(r).

31 Environment Act 1995 Sch 11 para 5(1)(s).

32 Environment Act 1995 Sch 11 para 5(1)(t).

33 Environment Act 1995 Sch 11 para 5(1)(u).

34 Environment Act 1995 Sch 11 para 5(1)(w).

35 Environment Act 1995 Sch 11 para 5(2).

36 Environment Act 1995 Sch 11 para 5(3).

37 le under the Environment Act 1995 Sch 11 para 5(3): see the text and note 36.

38 Environment Act 1995 Sch 11 para 5(4).

39 As to the Secretary of State see [PARA 58](#). As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see [PARA 59](#).

40 Environment Act 1995 Sch 11 para 5(5).

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(4) CLEAN AIR

(i) Powers, Duties, etc

207. Power to make regulations and orders.

Any power of the Secretary of State¹ under the Clean Air Act 1993 to make orders or regulations²: (1) includes power to make different provision in the order or regulations for different circumstances³; (2) includes power to make such incidental, supplemental and transitional provision as he considers appropriate⁴; and (3) with certain exceptions⁵, is exercisable by statutory instrument⁶.

The Secretary of State may by regulations⁷ provide that certain provisions⁸ have effect with such modifications as are prescribed in the regulations with a view to enabling the government of the United Kingdom⁹ to give effect to any provision made by or under any international agreement to which the government is for the time being a party¹⁰.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Clean Air Act 1993 s 63(1). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

3 Clean Air Act 1993 s 63(1)(a).

4 Clean Air Act 1993 s 63(1)(b).

5 Ie except in the case of the powers conferred by the Clean Air Act 1993 s 19(4) (see PARA 218), s 60 (see PARA 209) and Sch 3 para 3 (repealed): s 63(1)(c).

6 Clean Air Act 1993 s 63(1)(c). Any statutory instrument containing regulations made under the Clean Air Act 1993, except an instrument containing regulations a draft of which is required by s 6(3) (see PARA 228), s 10(5) (see PARA 230) or s 47(2) (see PARA 232) to be approved by a resolution of each House of Parliament, is subject to annulment in pursuance of a resolution of either House of Parliament: s 63(2). Any statutory instrument containing an order under s 21 or s 22 is also subject to annulment in pursuance of a resolution of either House of Parliament: s 63(3).

7 At the date at which this volume states the law no such regulations had been made.

8 Ie the Clean Air Act 1993 Pt IV (ss 30-33), Pt V (ss 34-40), and so much of Pt VII (ss 47-68) (apart from s 48) as relates to those Parts: see s 48.

9 As to the meaning of 'United Kingdom' see PARA 1 note 2.

10 Clean Air Act 1993 s 48.

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208. Power to hold inquiries.

The Secretary of State¹ may cause an inquiry to be held in any case in which he considers it appropriate for an inquiry to be held either in connection with a provision of the Clean Air Act 1993 or with a view to preventing or dealing with air pollution at any place².

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Clean Air Act 1993 s 59(1) (amended by the Environment Act 1995 Sch 22 para 197). Without prejudice to the generality of the Local Government Act 1972 s 250(1) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105), the provisions of s 250(2)-(5) apply to inquiries in England and Wales in pursuance of the Clean Air Act 1993 s 59(1) as they apply to inquiries in pursuance of the Local Government Act 1972 s 250: Clean Air Act 1993 s 59(2). As to the power to hold inquiries in relation to any matter concerning public health see PARA 63.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

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209. Power to enforce duties of defaulting authorities.

If the Secretary of State¹ is satisfied that any local authority² (the 'defaulting authority') has failed to perform any of its functions³ which it ought to have performed, he may make an order declaring the authority to be in default, and directing it to perform such of its functions as may be specified in the order; and he may specify the manner in which and the times within which those functions are to be performed by the authority⁴. If the defaulting authority fails to comply with any direction contained in such an order, the Secretary of State may, instead of enforcing the order by mandatory order, make an order transferring to himself such of the functions of the authority as he thinks fit⁵. Where any functions of the defaulting authority are transferred⁶, the amount of any expenses which the Secretary of State certifies were incurred by him in performing those functions must on demand be paid to him by the defaulting authority⁷.

An order transferring any functions of the authority⁸ may provide for the transfer to the Secretary of State of such of the property, rights, liabilities and obligations of the authority as he considers appropriate⁹.

An order made under these provisions may be varied or revoked by a subsequent order so made¹⁰.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'local authority' see PARA 99.

3 For these purposes, 'functions', in relation to an authority, means functions conferred on the authority by virtue of the Clean Air Act 1993: s 60(8).

4 Clean Air Act 1993 s 60(1). Section 60 does not apply to a failure by a local authority: (1) to discharge its functions under s 18 (see PARA 217); (2) to submit proposals to the Secretary of State in pursuance of a direction under s 19(1) (see PARA 218); or (3) to perform a duty imposed on it by or by virtue of s 19(4) or s 19(6) (see PARA 218): s 60(7). The order of the Secretary of State need not be made by statutory instrument: see s 63(1) (c); and PARA 207. As to the enforcement of duties under certain other enactments see PARA 64.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

5 Clean Air Act 1993 s 60(2). As to mandatory orders (formerly known as orders of mandamus) see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 133 et seq.

6 Ie in pursuance of the Clean Air Act 1993 s 60(2): see the text and note 5.

7 Clean Air Act 1993 s 60(3). Where any expenses are in pursuance of s 60(3) required to be paid by the authority in respect of any functions so transferred: (1) the expenses must be defrayed by the authority in the like manner, and must be debited to the like account, as if the functions had not been transferred and the expenses had been incurred by the authority in performing them; and (2) the authority has the like powers for the purpose of raising any money required for the purpose of head (1) above as the authority would have had for the purpose of raising money required for defraying expenses incurred for the purposes of the functions in question: s 60(4).

8 Ie in pursuance of the Clean Air Act 1993 s 60(2): see the text and note 5.

9 Clean Air Act 1993 s 60(5). As to the powers of the Secretary of State on the revocation of an order see note 10.

10 Clean Air Act 1993 s 60(6). Where such an order is revoked the Secretary of State may, by the revoking order or a subsequent order, make such provision as he considers appropriate with respect to any property, rights, liabilities and obligations held by him for the purposes of the transferred functions: s 60(5).

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210. Emissions from Crown premises.

It is part of the functions of a local authority¹, in cases where it seems to it proper to do so, to report to the responsible minister² any cases of³: (1) emissions of dark smoke⁴ or of grit or dust from any premises⁵ which are under the control of any government department and are occupied for the public service of the Crown⁶ or for any of the purposes of any government department⁷, or from any premises occupied for the service of a visiting force⁸; or (2) emissions of smoke, whether dark smoke or not, from any such premises which are within a smoke control area⁹; or (3) emissions of smoke, whether dark smoke or not, from any such premises which appear to the authority to constitute a nuisance to the inhabitants of the neighbourhood¹⁰; or (4) emissions of dark smoke from any vessel¹¹ of Her Majesty's navy, or any government ship¹² in the service of the Secretary of State¹³ while employed for the purposes of Her Majesty's navy¹⁴, which appear to the authority to constitute a nuisance to the inhabitants of the neighbourhood¹⁵. On receiving any such report the responsible minister must inquire into the circumstances and, if his inquiry reveals that there is cause for complaint, he must employ all practicable means¹⁶ for preventing or minimising the emission of the smoke, grit or dust or for abating the nuisance and preventing a recurrence of it, as the case may be¹⁷.

1 As to the meaning of 'local authority' see PARA 99.

2 In the case of the Duchy of Cornwall, references to the responsible minister must be read as references to such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints: see the Clean Air Act 1993 s 46(2).

3 Clean Air Act 1993 s 46(1). This provision also applies to premises occupied for the purposes of the Duchy of Lancaster or the Duchy of Cornwall as it applies to premises occupied for the public service of the Crown which are under the control of a government department: see s 46(2).

The fact that there subsists in any premises an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department, does not affect the application of the Clean Air Act 1993 to those premises so long as that interest is not the interest of the occupier of the premises; and the Clean Air Act 1993 has effect accordingly in relation to the premises and that and all other interests in the premises: s 46(3). See also *Nottingham Area No 1 Hospital Management Committee v Owen* [1958] 1 QB 50, [1957] 3 All ER 358, DC.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 As to the meaning of 'dark smoke' see PARA 214 note 1. 'Smoke' includes soot, ash, grit and gritty particles emitted in smoke: Clean Air Act 1993 s 64(1).

5 'Premises' includes land: Clean Air Act 1993 s 64(1). See *Sheffield City Council v ADH Demolition Ltd* (1983) 82 LGR 177, [1984] JPL 658 (demolition site was considered to be 'premises').

6 A hospital which is occupied by a health authority carrying out duties imposed on the Secretary of State by the National Health Service Act 1977 (see also now the National Health Service Act 2006) (see **HEALTH SERVICES**) is occupied for the public service of the Crown: see *Nottingham Area No 1 Hospital Management Committee v Owen* [1958] 1 QB 50, [1957] 3 All ER 358, DC.

7 Clean Air Act 1993 s 46(1)(a).

8 See the Clean Air Act 1993 s 46(5). For these purposes, 'visiting force' means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the

Visiting Forces Act 1952 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Clean Air Act 1993 s 46(6). The Clean Air Act 1993, except Pt IV (ss 30-33) and Pt V (ss 34-40), has effect in relation to premises occupied for the service of a visiting force as if the premises were occupied for the public service of the Crown and were under the control of the government department by arrangement with whom the premises are occupied: s 46(5).

9 Clean Air Act 1993 s 46(1)(b). As to smoke control areas see PARA 217 et seq.

10 Clean Air Act 1993 s 46(1)(c).

11 'Vessel' has the same meaning as 'ship' in the Merchant Shipping Act 1995 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229): Clean Air Act 1993 s 64(1) (definition amended by the Merchant Shipping Act 1995 Sch 13 para 94).

12 For these purposes, 'government ship' has the same meaning as in the Merchant Shipping Act 1995 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 20): Clean Air Act 1993 s 46(6) (amended by the Merchant Shipping Act 1995 Sch 13 para 94).

13 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

14 The Clean Air Act 1993 s 44 (see PARA 216), with the omission of the reference in s 44(2) to the owner, applies to vessels owned by the Crown, except that it does not apply to vessels of Her Majesty's navy or to government ships in the service of the Secretary of State while employed for the purposes of Her Majesty's navy: s 46(4).

15 Clean Air Act 1993 s 46(1)(d).

16 'Practicable' means reasonably practicable having regard, among other things, to local conditions and circumstances, to the financial implications and to the current state of technical knowledge; and 'practicable means' includes the provision and maintenance of plant and its proper use: Clean Air Act 1993 s 64(1). Cf *Cooper v Woolley* (1867) LR 2 Exch 88, where it was held that 'as far as possible' meant as far as possible consistently with carrying on the relevant trade.

17 Clean Air Act 1993 s 46(1). See also note 3.

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211. Exemption for research.

If a local authority¹ is satisfied, on the application of any person interested, that it is expedient to do so for the purposes of enabling investigations or research relevant to the problems of the pollution of the air to be carried out without rendering the applicant liable to proceedings under or by virtue of specified provisions², it may by notice in writing given to the applicant, wholly or to a limited extent, exempt certain chimneys³, furnaces, boilers, industrial plant⁴ or premises⁵ or the acquisition or sale of fuel from the operation of those provisions⁶, in each case subject to such conditions, if any, and for such period as may be specified in the notice⁷. Any person who has applied to the local authority for such exemption may, if he is dissatisfied with the decision of the authority on the application, appeal to the Secretary of State⁸. The Secretary of State may, if he thinks fit, by notice in writing given to the applicant and the local authority, give any exemption which the authority might have given or vary the terms of any exemption which it has given⁹.

1 As to the meaning of 'local authority' see PARA 99.

2 I.e. any of the provisions of the Environmental Protection Act 1990 or the Clean Air Act 1993 mentioned in s 45(1)(a)-(e): see note 6.

3 'Chimney' includes structures and openings of any kind from or through which smoke, grit, dust or fumes may be emitted, and, in particular, includes flues; and references to a chimney of a building include references to a chimney which serves the whole or a part of a building but is structurally separate from the building: Clean Air Act 1993 s 64(1). 'Fumes' means any airborne solid matter smaller than dust: s 64(1). As to the meaning of 'smoke' see PARA 210 note 4. The funnel of a steam tug is a chimney: *Tough v Hopkins* [1904] 1 KB 804, DC.

4 'Industrial plant' includes any still, melting pot or other plant used for any industrial or trade purposes, and also any incinerator used for or in connection with any such purposes: Clean Air Act 1993 s 64(1).

5 As to the meaning of 'premises' see PARA 210 note 5.

6 See the Clean Air Act 1993 s 45(1), which permits the exemption of:

68 (1) any chimney from the operation of s 1 (see PARA 214), s 5 (see PARA 227), s 20 (see PARA 217), s 43 (see PARA 216) and the Environmental Protection Act 1990 Pt III (ss 79-84) (see **NUISANCE** vol 78 (2010) PARA 155 et seq) (Clean Air Act 1993 s 45(1)(a));

69 (2) any furnace, boiler or industrial plant from the operation of s 4(2) (see PARA 226) (s 45(1)(b));

70 (3) any premises from the operation of s 2 (see PARA 215) (s 45(1)(c));

71 (4) any furnace from the operation of s 6 or s 8 (see PARA 228) and s 10 (see PARA 230) (s 45(1)(d)); and

72 (5) the acquisition or sale of any fuel specified in the notice from the operation of s 23 (see PARA 221) (s 45(1)(e)).

7 Clean Air Act 1993 s 45(1). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

8 Clean Air Act 1993 s 45(2). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Clean Air Act 1993 s 45(2).

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212. Disclosure of information.

If any person discloses any information relating to any trade secret used in carrying on any particular undertaking which has been given to him or obtained by him by virtue of the Clean Air Act 1993, he is guilty of an offence and liable on summary conviction to a penalty¹. However, a person is not guilty of such an offence by reason of the disclosure of any information if the disclosure is made²: (1) in the performance of his duty³; (2) in pursuance of the provision relating to arranging for the publication of information on the problem of air pollution⁴; or (3) with the consent of a person having a right to disclose the information⁵.

1 Clean Air Act 1993 s 49(1). The penalty is a fine not exceeding level 5 on the standard scale: s 49(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

At to environmental information generally see PARA 55. As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

2 Clean Air Act 1993 s 49(2).

3 Clean Air Act 1993 s 49(2)(a).

4 Clean Air Act 1993 s 49(2)(b). The provision referred to in the text is s 34(1)(b) (see PARA 239): see s 49(2)(b).

5 Clean Air Act 1993 s 49(2)(c).

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213. County court powers to authorise works and order payments.

If works are reasonably necessary in or in connection with a building in order to enable the building to be used for some purpose¹ without contravention of certain provisions of the Clean Air Act 1993², the occupier of the building³:

- 298 (1) may, if by reason of a restriction affecting his interest in the building he is unable to carry out the works without the consent of the owner⁴ of the building or some other person interested in the building and is unable to obtain that consent, apply to the county court for an order to enable the works to be carried out by him⁵; and
- 299 (2) may, if he considers that the whole or any proportion of the cost of carrying out the works ought to be borne by the owner of the building or some other person interested in the building, apply to the county court for an order directing the owner or other person to indemnify him, either wholly or in part, in respect of that cost⁶.

In either case, the court may make such order as may appear to the court to be just⁷.

1 In considering whether any, and if so what works are reasonably necessary in order to enable a building to be used for a purpose without contravention of any of the provisions of this Act, regard is to be had to any difficulty there may be in obtaining, or in obtaining otherwise than at a high price, any fuels which would have to be used but for the execution of the works: Clean Air Act 1993 s 64(5).

2 Ie without contravention of any of the provisions of the Clean Air Act 1993 apart from Pt IV (ss 30-33) and Pt V (ss 34-40).

3 Clean Air Act 1993 s 54(1). Any reference in the Clean Air Act 1993 to the occupier of a building is to be read, in relation to any building different parts of which are occupied by different persons, as a reference to the occupier or other person in control of the part of the building in which the relevant fireplace is situated: s 64(2). 'Fireplace' includes any furnace, grate or stove, whether open or closed: s 64(1).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 'Owner' in relation to premises means the person for the time being receiving the rackrent of the premises, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the premises were let at a rackrent: Clean Air Act 1993 s 64(1). See *Camden London Borough Council v Gunby* [1999] 4 All ER 602, [2000] Env LR D10 (managing agent was 'owner' for purposes of the Clean Air Act 1993 s 64(1) and other legislation).

5 Clean Air Act 1993 s 54(1)(a).

6 Clean Air Act 1993 s 54(1)(b).

7 Clean Air Act 1993 s 54(1).

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(ii) Dark Smoke

214. Emissions of dark smoke from chimneys.

Dark smoke¹ must not be emitted from a chimney² of any building³ and if on any day⁴ dark smoke is so emitted, the occupier of the building⁵ is guilty of an offence⁶. In addition, dark smoke must not be emitted from a chimney (not being a chimney of a building) which serves the furnace of any fixed boiler or industrial plant⁷ and if on any day dark smoke is so emitted, the person having possession of the boiler or plant is guilty of an offence⁸. These provisions do not apply to emissions of smoke from any chimney, in such classes of case and subject to such limitations as may be prescribed in regulations⁹ made by the Secretary of State¹⁰, lasting for not longer than such periods as may be so prescribed¹¹.

In any proceedings for an offence under these provisions¹², it is a defence to prove:

- 300 (1) that the alleged emission was solely due to the lighting up of a furnace which was cold and that all practicable¹³ steps had been taken to prevent or minimise the emission of dark smoke¹⁴;
- 301 (2) that the alleged emission was solely due to some failure of a furnace, or of apparatus used in connection with a furnace, and that the failure could not reasonably have been foreseen or, if foreseen, could not reasonably have been provided against and that the alleged emission could not reasonably have been prevented by action taken after the failure occurred¹⁵; or
- 302 (3) that the alleged emission was solely due to the use of unsuitable fuel and that suitable fuel was unobtainable and the least unsuitable fuel which was available was used and all practicable steps had been taken to prevent or minimise the emission of dark smoke as the result of the use of that fuel¹⁶.

It is also a defence to prove that the alleged emission was due to the combination of two or more of the causes specified in heads (1) to (3) above and that the other conditions specified in those heads are satisfied in relation to those causes respectively¹⁷.

A person guilty of an offence under these provisions¹⁸ is liable on summary conviction to a penalty¹⁹.

1 'Dark smoke' means smoke which, if compared in the appropriate manner with a chart of the type known on 5 July 1956 (ie the date of the passing of the Clean Air Act 1956) as the Ringelmann Chart, would appear to be as dark as or darker than shade 2 on the chart: Clean Air Act 1993 ss 3(1), 64(1). In proceedings for an offence under s 1 or s 2 (see PARA 215) the court may be satisfied that smoke is or is not dark smoke as defined in s 3(1) notwithstanding that there has been no actual comparison of the smoke with a chart of the type mentioned: s 3(2) (amended by the Environment Act 1995 Sch 24). Without prejudice to the generality of the Clean Air Act 1993 s 3(1), (2), if the Secretary of State by regulations prescribes any method of ascertaining whether smoke is dark smoke as defined in s 3(1), proof in any such proceedings as are mentioned in s 3(2) that that method was properly applied, and that the smoke was thereby ascertained to be or not to be dark smoke as so defined, is to be accepted as sufficient: s 3(3). At the date at which this volume states the law no such regulations had been made. As to the meaning of 'smoke' see PARA 210 note 4. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'chimney' see PARA 211 note 3. As to 'emitted' see *O'Fee v Copeland Borough Council* (1995) 160 JP 20, 94 LGR 115; and PARA 214.

3 'Building' must be part of a recognised structure but could include a greenhouse: see *Clifford v Holt* [1899] 1 Ch 698.

4 'Day' means a period of 24 hours beginning at midnight: Clean Air Act 1993 s 64(1).

5 As to references to the occupier of a building see PARA 213 note 3.

6 Clean Air Act 1993 s 1(1). Section 1 has effect subject to the duty to notify offences to the occupier or other person liable (see s 51; and PARA 249): s 1(6). As to the duty to notify occupiers of offences under s 1 see PARA 249. As to the application of s 1 to railway locomotive engines and vessels see PARA 216.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

7 'Fixed boiler or industrial plant' means any boiler or industrial plant which is attached to a building or is for the time being fixed to or installed on any land: Clean Air Act 1993 s 64(1). As to the meaning of 'industrial plant' see PARA 211 note 4.

8 Clean Air Act 1993 s 1(2).

9 At the date at which this volume states the law no regulations had been made under the Clean Air Act 1993 s 1(3) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Dark Smoke (Permitted Periods) Regulations 1958, SI 1958/498, and the Dark Smoke (Permitted Periods) (Vessels) Regulations 1958, SI 1958/878, have effect as if so made. As to the power to make regulations see PARA 207.

10 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

11 Clean Air Act 1993 s 1(3).

12 Ie under the Clean Air Act 1993 s 1(1), (2): see the text and notes 1-7.

13 As to the meaning of 'practicable' see PARA 210 note 16.

14 Clean Air Act 1993 s 1(4)(a).

15 Clean Air Act 1993 s 1(4)(b).

16 Clean Air Act 1993 s 1(4)(c).

17 Clean Air Act 1993 s 1(4).

18 Ie under the Clean Air Act 1993 s 1(1), (2): see the text and notes 1-7.

19 See the Clean Air Act 1993 s 1(5). A person guilty of an offence under s 1 is liable, in the case of a contravention of s 1(1) as respects a chimney of a private dwelling, to a fine not exceeding level 3 on the standard scale and, in any other case, to a fine not exceeding level 5 on the standard scale: s 1(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

In the Clean Air Act 1993, except so far as the context otherwise requires, 'private dwelling' means any building or part of a building used or intended to be used as such; and a building or part of a building is not to be taken for the purposes of the Clean Air Act 1993 to be used or intended to be used otherwise than as a private dwelling by reason that a person who resides or is to reside in it is or is to be required or permitted to reside in it in consequence of his employment or of holding an office: s 64(4).

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215. Dark smoke from industrial or trade premises.

Dark smoke¹ must not be emitted² from any industrial or trade premises³ and if on any day⁴ dark smoke is so emitted, the occupier of the premises and any person who causes or permits the emission is guilty of an offence⁵. This provision does not apply to: (1) the emission of dark smoke from certain chimneys⁶; or (2) to the emission of dark smoke caused by the burning of any matter prescribed in regulations⁷ made by the Secretary of State⁸, subject to compliance with such conditions (if any) as may be so prescribed⁹.

In proceedings for an offence under these provisions, there is to be taken to have been an emission of dark smoke from industrial or trade premises in any case where material is burned on those premises and the circumstances are such that the burning would be likely to give rise to the emission of dark smoke, unless the occupier or any person who caused or permitted the burning shows that no dark smoke was emitted¹⁰.

In proceedings for an offence under these provisions, it is a defence to prove that the alleged emission was inadvertent and that all practicable¹¹ steps had been taken to prevent or minimise the emission of dark smoke¹².

A person guilty of an offence under these provisions is liable on summary conviction to a penalty¹³.

1 As to the meaning of 'dark smoke' see PARA 214 note 1. As to the meaning of 'smoke' see PARA 210 note 4.

2 This includes a movement above the surface of the ground within the boundaries of the land occupied: *O'Fee v Copeland Borough Council* (1995) 160 JP 20, 94 LGR 115.

3 For these purposes, 'industrial or trade premises' means premises used for any industrial or trade purposes; or premises not so used on which matter is burnt in connection with any industrial or trade process: Clean Air Act 1993 s 2(6). As to the meaning of 'premises' see PARA 210 note 5; and *Sheffield City Council v ADH Demolition Ltd* (1983) 82 LGR 177, [1984] JPL 658.

4 As to the meaning of 'day' see PARA 214 note 4.

5 Clean Air Act 1993 s 2(1). Section 2 has effect subject to the duty to notify offences to the occupier or other person liable (see s 51; and PARA 249): s 2(7). As to the duty to notify occupiers of offences under s 2 see PARA 249.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

6 I.e chimneys to which the Clean Air Act 1993 s 1 (see PARA 214) applies. As to the meaning of 'chimney' see PARA 211 note 3.

7 As to regulations made under the Clean Air Act 1993 s 2(2) see the Waste Management (Miscellaneous Provisions) (England and Wales) Regulations 2007, SI 2007/1156 (amended by SI 2007/3538) (and see below) and, by virtue of the Interpretation Act 1978 s 17(2)(b), the Clean Air (Emission of Dark Smoke) (Exemption) Regulations 1969, SI 1969/1263 (amended by SI 2005/1082; and SI 2007/1156) have effect as if so made. As to the power to make regulations see PARA 207.

8 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Clean Air Act 1993 s 2(2).

- 10 Clean Air Act 1993 s 2(3).
- 11 As to the meaning of 'practicable' see PARA 210 note 16.
- 12 Clean Air Act 1993 s 2(4).
- 13 Clean Air Act 1993 s 2(5). The penalty is a fine not exceeding £20,000: s 2(5) (amended by the Environment Act 1995 Sch 22 para 195).

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216. Smoke from vessels and railway engines.

The prohibition on the emission of dark smoke¹ applies with modifications² in relation to vessels³ in certain waters⁴ and to railway locomotive engines⁵ as it applies in relation to buildings⁶, but otherwise the Clean Air Act 1993 Parts I to III⁷ do not apply to smoke, grit or dust from any vessel or railway locomotive engine⁸.

1 le the Clean Air Act 1993 s 1: see PARA 214. As to the meaning of 'dark smoke' see PARA 214 note 1. As to the meaning of 'smoke' see PARA 210 note 4.

2 Thus in the application of the Clean Air Act 1993 s 1 to a vessel: (1) for the reference in s 1(1) to the occupier of the building there is substituted a reference to the owner of, and to the master or other officer or person in charge of, the vessel; (2) references to a furnace are to be read as including references to an engine of the vessel; and (3) the penalty under s 1(5) is omitted: see s 44(2)(a)-(c). A person guilty of an offence under s 1 in relation to a vessel is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 44(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. In the case of railway locomotive engines, for the reference in s 1(1) to the occupier of the building there is substituted a reference to the owner of the engine: s 43(2). As to the occupier of a building see PARA 213 note 3. As to the meaning of 'owner' see PARA 213 note 4. As to certain Crown vessels see PARA 210 note 14.

3 As to the meaning of 'vessel' see PARA 210 note 11.

4 The waters to which the Clean Air Act 1993 s 44 applies are: (1) all waters not navigable by sea-going ships; and (2) all waters navigable by sea-going ships which are within the seaward limits of the territorial waters of the United Kingdom and are contained within any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under any Act to make charges in respect of vessels entering it or using facilities in it: s 44(4). 'Charges' means any charges with the exception of light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons and of charges in respect of pilotage: s 44(5). As to the meaning of 'United Kingdom' see PARA 1 note 2. As to territorial waters see **WATER AND WATERWAYS** vol 100 (2009) PARA 31. For these purposes, a vessel in any waters to which s 44 applies which are not within the district of any local authority is deemed to be within the district of the local authority whose district includes that point on land which is nearest to the spot where the vessel is: s 44(3). As to the meaning of 'local authority' see PARA 99.

5 The owner of a railway locomotive engine must use any practicable means there may be for minimising the emission of smoke from the chimney on the engine, and if he fails to do so he is, if smoke is emitted from that chimney, guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to cumulative penalties on continuance in accordance with the Clean Air Act 1993 s 50 (see PARA 246): s 43(3), (4). As to the meaning of 'practicable means' see PARA 210 note 16. As to the meaning of 'chimney' see PARA 211 note 3.

6 Clean Air Act 1993 ss 43(1), 44(1). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

7 le the Clean Air Act 1993 Pt I (ss 1-3), Pt II (ss 4-16) and Pt III (ss 18-29).

8 Clean Air Act 1993 ss 43(5), 44(6).

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(iii) Smoke Control Areas

217. Smoke control orders.

A local authority¹ may by order declare the whole or any part of its district to be a smoke control area, and any order so made is referred to as a smoke control order². A smoke control order: (1) may make different provision for different parts of the smoke control area³; (2) may limit the operation of the statutory provisions relating to the prohibition of emissions of smoke⁴ to specified classes of building⁵; and (3) may exempt specified buildings or classes of buildings, or specified fireplaces⁶ or classes of fireplace, in the area from the operation of such provisions upon such conditions as may be specified in the order⁷. The order may be revoked or varied by a subsequent order⁸.

If on any day⁹ smoke¹⁰ is emitted from a chimney¹¹ of a building within a smoke control area, the occupier of the building¹² is guilty of an offence¹³. If on any day smoke is emitted from a chimney (not being the chimney of a building) which serves the furnace of any fixed boiler or industrial plant within a smoke control area, the person having possession of the boiler or plant is guilty of an offence¹⁴.

Any person guilty of an offence under these provisions¹⁵ is liable on summary conviction to a penalty¹⁶. In proceedings for offences under these provisions it is a defence to prove that the alleged emission was not caused by the use of any fuel other than an authorised fuel¹⁷.

1 As to the meaning of 'local authority' see PARA 99. Without prejudice to the Clean Air Act 1993 s 61(1) (see PARA 101 note 9), any two or more local authorities may combine for the purpose of declaring an area to be a smoke control area and in that event: (1) the smoke control area may be the whole of the districts of those authorities or any part of those districts; (2) the references in s 18 (see the text and notes 2-8), Sch 1 (see PARA 219) and Sch 2 para 1 (see PARA 223) to the local authority are to be read as references to the local authorities acting jointly; (3) the reference in Sch 1 para 1 (see PARA 219) to a place in the district of the local authority is to be construed as a reference to a place in each of the districts of the local authorities: s 61(3). Except as provided in s 61(3), references in the Clean Air Act 1993 to the local authority are, in relation to a building or dwelling, or in relation to a boiler or industrial plant, in the smoke control area, to be read as references to that one of the local authorities within whose district the building, dwelling, boiler or plant is situated: s 61(3). As to the meaning of 'industrial plant' see PARA 211 note 4.

2 Clean Air Act 1993 s 18(1). 'Smoke control order' means an order made by the local authority under s 18: s 29. See further PARA 219. As to the power of the Secretary of State to require the making of such an order see PARA 219. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

3 Clean Air Act 1993 s 18(2)(a).

4 Ie the provisions of the Clean Air Act 1993 s 20.

5 Clean Air Act 1993 s 18(2)(b).

6 As to the meaning of 'fireplace' see PARA 213 note 3.

7 Clean Air Act 1993 s 18(2)(c). The reference in the text and specified buildings or classes of building includes a reference to any specified, or to any specified classes of, fixed boiler or industrial plant: s 18(2). As to the meaning of 'fixed boiler or industrial plant' see PARA 214 note 7.

8 Clean Air Act 1993 s 18(3).

9 As to the meaning of 'day' see PARA 214 note 4.

10 As to the meaning of 'smoke' see PARA 210 note 4.

11 As to the meaning of 'chimney' see PARA 211 note 3.

12 As to the occupier of a building see PARA 213 note 3.

13 Clean Air Act 1993 s 20(1). The provisions of s 20(1), (2) have effect: (1) subject to any exemptions for the time being in force under s 18 (see the text and notes 1-8), s 21 or s 22 (see PARA 220); (2) subject to the duty to notify offences to the occupier or other person liable (see s 51; and PARA 249): s 20(3). As to the duty to notify occupiers of offences under s 20 see PARA 249. As to Crown premises and visiting forces see PARA 210. As to classes of fireplace exempted from s 20 see the Smoke Control Areas (Exempted Fireplaces) (England) (No 3) Order 2009, SI 2009/2302; and the Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2009, SI 2009/3224.

14 Clean Air Act 1993 s 20(2). See also note 13.

15 Ie under the Clean Air Act 1993 s 20(1), (2): see the text and notes 9-14.

16 Clean Air Act 1993 s 20(5). The penalty is a fine not exceeding level 3 on the standard scale: s 20(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

17 Clean Air Act 1993 s 20(4). 'Authorised fuel' means a fuel declared by regulations of the Secretary of State to be an authorised fuel for the purposes of Pt III (ss 18-29): ss 20(6), 29. As to regulations under s 20(6) see the Smoke Control Areas (Authorised Fuels) (England) Regulations 2008, SI 2008/514 (amended by SI 2008/2342; SI 2009/2191; and SI 2010/576); and the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2008, SI 2008/3100 (amended by SI 2009/3225). As to regulations generally see PARA 207.

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218. Direction to make smoke control order.

If, after consultation with a local authority¹ the Secretary of State² is satisfied: (1) that it is expedient to abate the pollution of the air by smoke³ in the district or part of the district of the authority⁴; and (2) that it has not exercised or has not sufficiently exercised its power to declare smoke control areas⁵ to abate the pollution⁶, he may direct the authority to prepare and submit to him for his approval, within such period (not being less than six months from the direction) as may be specified in the direction, proposals for making and bringing into operation one or more smoke control orders within such period or periods as the authority thinks fit⁷. The Secretary of State may reject such proposals, or approve them in whole or in part, with or without modification⁸. Where a local authority to whom a direction⁹ has been given fails to submit such proposals to the Secretary of State within the period specified in the direction, or submits proposals which are rejected in whole or in part, he may make an order declaring it to be in default and directing it for the purposes of removing the default to exercise its powers to declare a smoke control area¹⁰ in such manner and within such period as may be specified in the order¹¹. While proposals submitted by a local authority and approved by the Secretary of State under these provisions¹² are in force, it is the duty of the local authority to make such order or orders¹³ as are necessary to carry out the proposals¹⁴.

1 As to the meaning of 'local authority' see PARAS 99, 217 note 1.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the meaning of 'smoke' see PARA 210 note 4.

4 Clean Air Act 1993 s 19(1)(a). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

5 I.e. its powers under the Clean Air Act 1993 s 18: see PARA 217.

6 Clean Air Act 1993 s 19(1)(b).

7 Clean Air Act 1993 s 19(1). Any such proposals submitted by the local authority in pursuance of a direction under s 19(1) may be varied by further proposals submitted by the authority within the period for making of the original proposals or such longer period as the Secretary of State may allow: s 19(2).

8 Clean Air Act 1993 s 19(3).

9 I.e. a direction under the Clean Air Act 1993 s 19(1): see the text and notes 1-7.

10 I.e. a power under the Clean Air Act 1993 s 18: see PARA 217.

11 Clean Air Act 1993 s 19(4). An order under s 19(4) may be varied or revoked by a subsequent order so made: s 19(5). There is no requirement for an order made by the Secretary of State to be made by statutory instrument: see s 63(1)(c); and PARA 207. The default provisions of s 60 (see PARA 209), do not apply to a failure by the local authority under s 19(1): s 60(7).

12 I.e. under the Clean Air Act 1993 s 19.

13 I.e. under the Clean Air Act 1993 s 18: see PARA 217.

14 Clean Air Act 1993 s 19(6).

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219. Making and date of operation of smoke control orders.

Before making a smoke control order¹, a local authority² must publish in the London Gazette and once at least in each of two successive weeks in some newspaper circulating in the area to which the order will relate a notice³: (1) stating that it proposes to make the order, and its general effect⁴; (2) specifying a place in the district of the local authority where a copy of the order and of any map or plan referred to in it may be inspected by any person free of charge at all reasonable times during a period of not less than six weeks from the last publication of the notice⁵; and (3) stating that within that period any person who will be affected by the order may by notice in writing to the authority object to the making of the order⁶. Besides publishing such a notice the local authority must also post, and keep posted throughout the period mentioned in head (2) above, copies of the notice in such number of conspicuous places within the area to which the order relates as appears to it necessary for the purpose of bringing the proposal to make the order to the notice of persons who will be affected⁷. If an objection is duly made to the authority within that period, and is not withdrawn, the authority must not make the order without first considering the objection⁸.

A smoke control order comes into operation on such date not less than six months after it is made as may be specified in it⁹; and an order varying a previous order so as to exempt specified buildings or classes of building or specified fireplaces¹⁰ or classes of fireplace from the operation of the statutory provisions prohibiting smoke emissions in a smoke control area¹¹ may come into operation on, or at any time after, the date on which it is made¹².

1 As to the meaning of 'smoke control order' see PARA 217 note 2.

2 As to the meaning of 'local authority' see PARAS 99, 217 note 1.

3 Clean Air Act 1993 s 18(4), Sch 1 para 1. As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 Clean Air Act 1993 Sch 1 para 1(a).

5 Clean Air Act 1993 Sch 1 para 1(b).

6 Clean Air Act 1993 Sch 1 para 1(c).

7 Clean Air Act 1993 Sch 1 para 2.

8 Clean Air Act 1993 Sch 1 para 3.

9 Clean Air Act 1993 Sch 1 para 4. If, before the date on which the order is to come into operation, the local authority passes a resolution postponing its coming into operation, and publishes a notice stating the effect of the resolution in the London Gazette and once at least in each of two successive weeks in some newspaper circulating in the area to which the order will relate, the order must (unless its coming into operation is again postponed under Sch 1 para 6) come into operation on the date specified in the resolution: Sch 1 para 6.

10 As to the meaning of 'fireplace' see PARA 213 note 3.

11 Ie the provisions of the Clean Air Act 1993 s 20: see PARA 217. As to exemptions see further PARA 220.

12 Clean Air Act 1993 Sch 1 para 5.

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220. Exemption of fireplaces from, and suspension or relaxation of, smoke control.

The Secretary of State¹ may by order² exempt any class of fireplace³, upon such conditions as may be specified in the order, from the statutory provisions prohibiting smoke emissions in smoke control areas⁴ if he is satisfied that such fireplaces can be used for burning fuel other than authorised fuels⁵ without producing any smoke⁶ or a substantial quantity of smoke⁷.

The Secretary of State may, if it appears to him to be necessary or expedient so to do, by order suspend or relax the operation of those provisions⁸ in relation to the whole or any part of a smoke control area⁹, although before making such an order he must consult with the local authority unless he is satisfied that, on account of urgency, such consultation is impracticable¹⁰. As soon as practicable¹¹ after the making of such an order the local authority¹² must take such steps as appear to it suitable for bringing its effect to the notice of persons affected¹³.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 The following orders have been made under the Clean Air Act 1993 s 21: the Smoke Control Areas (Exempted Fireplaces) Order 1993, SI 1993/2277; the Smoke Control Areas (Exempted Fireplaces) Order 1996, SI 1996/1108 (amended by SI 1999/1515); the Smoke Control Areas (Exempted Fireplaces) Order 1997, SI 1997/3009; the Smoke Control Areas (Exempted Fireplaces) Order 1999, SI 1999/1515; the Smoke Control Areas (Exempted Fireplaces) (England) Order 2001, SI 2001/422; the Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2001, SI 2001/1231; the Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2003/2727; the Smoke Control Areas (Exempted Fireplaces) (England) Order 2003, SI 2003/2328; the Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2005, SI 2005/426; the Smoke Control Areas (Exempted Fireplaces) (England) Order 2006, SI 2006/1152; the Smoke Control Areas (Exempted Fireplaces) (England) (No 3) Order 2009, SI 2009/2302; the Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2009, SI 2009/3224; and the Smoke Control Areas (Exempted Fireplaces) (England) Order 2010, SI 2010/577. In addition, by virtue of the Interpretation Act 1978 s 17(2)(b), the following orders have effect as if made under the Clean Air Act 1993 s 21: the Smoke Control Areas (Exempted Fireplaces) Order 1970, SI 1970/615 (amended by SI 1974/855); the Smoke Control Areas (Exempted Fireplaces) (No 2) Order 1970, SI 1970/1667 (amended by SI 1974/762); the Smoke Control Areas (Exempted Fireplaces) Order 1971, SI 1971/1265 (amended by SI 1974/762); the Smoke Control Areas (Exempted Fireplaces) Order 1972, SI 1972/438 (amended by SI 1974/762); the Smoke Control Areas (Exempted Fireplaces) (No 2) Order 1972, SI 1972/955 (amended by SI 1974/762); the Smoke Control Areas (Exempted Fireplaces) Order 1973, SI 1973/2166 (amended by SI 1974/762); the Smoke Control Areas (Exempted Fireplaces) (No 2) Order 1975, SI 1975/1001; the Smoke Control Areas (Exempted Fireplaces) (No 3) Order 1975, SI 1975/1111; the Smoke Control Areas (Exempted Fireplaces) Order 1978, SI 1978/1609; the Smoke Control Areas (Exempted Fireplaces) Order 1982, SI 1982/1615; the Smoke Control Areas (Exempted Fireplaces) Order 1983, SI 1983/277; the Smoke Control Areas (Exempted Fireplaces) (No 2) Order 1983, SI 1983/426; the Smoke Control Areas (Exempted Fireplaces) (No 3) Order 1983, SI 1983/1018 (amended by SI 1997/3009); the Smoke Control Areas (Exempted Fireplaces) Order 1984, SI 1984/1649 (amended by SI 1985/864; SI 1997/3009); the Smoke Control Areas (Exempted Fireplaces) Order 1986, SI 1986/638; the Smoke Control Areas (Exempted Fireplaces) Order 1988, SI 1988/2282; the Smoke Control Areas (Exempted Fireplaces) Order 1989, SI 1989/1769; the Smoke Control Areas (Exempted Fireplaces) Order 1990, SI 1990/345; the Smoke Control Areas (Exempted Fireplaces) (No 2) Order 1990, SI 1990/2457; the Smoke Control Areas (Exempted Fireplaces) Order 1991, SI 1991/2892 (amended by SI 1996/1108); and the Smoke Control Areas (Exempted Fireplaces) Order 1992, SI 1992/2811. As to the power to make orders see PARA 219.

3 As to the meaning of 'fireplace' see PARA 213 note 3.

4 Ie the Clean Air Act 1993 s 20: see PARA 217.

5 As to the meaning of 'authorised fuel' see PARA 217 note 17.

- 6 As to the meaning of 'smoke' see PARA 210 note 4.
- 7 Clean Air Act 1993 s 21. As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.
- 8 Ie the Clean Air Act 1993 s 20: see PARA 217.
- 9 Clean Air Act 1993 s 22(1).
- 10 Clean Air Act 1993 s 22(2).
- 11 As to the meaning of 'practicable' see PARA 210 note 16.
- 12 As to the meaning of 'local authority' see PARAS 99, 217 note 1.
- 13 Clean Air Act 1993 s 22(3).

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221. Acquisition and sale of unauthorised fuel in smoke control areas.

Any person who:

- 303 (1) acquires any solid fuel¹ for use in a building in a smoke control area² otherwise than in a building or fireplace³ exempted from the operation of the provisions prohibiting smoke emissions in smoke control areas⁴;
- 304 (2) acquires any solid fuel for use in any fixed boiler or industrial plant⁵ in a smoke control area, not being a boiler or plant so exempted⁶; or
- 305 (3) sells by retail any solid fuel for delivery by him or on his behalf to a building in a smoke control area or premises⁷ in such an area in which there is any fixed boiler or industrial plant⁸,

is guilty of an offence and liable on summary conviction to a penalty⁹.

In proceedings for an offence under these provisions consisting of the sale of fuel for delivery to a building or premises, it is a defence for the person accused to prove that he believed and had reasonable grounds for believing¹⁰: (a) that the building was exempted from the provisions prohibiting emission of smoke in smoke control areas¹¹ or, in a case where the operation of those provisions is limited to specified classes of building, was not of a specified class¹²; or (b) that the fuel was acquired for use in a fireplace, boiler or plant so exempted or, in a case where the operation of those provisions is limited to specified classes of boilers or plant, in a boiler or plant not of a specified class¹³.

1 For these purposes, 'solid fuel' means any solid fuel other than an authorised fuel: Clean Air Act 1993 s 23(2). As to the meaning of 'authorised fuel' see PARA 217 note 17.

2 As to smoke control areas see PARA 217.

3 As to the meaning of 'fireplace' see PARA 213 note 3.

4 Clean Air Act 1993 s 23(1)(a). The provisions referred to in the text are those of s 20 (see PARA 217): see s 23(1)(a).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

5 As to the meaning of 'fixed boiler or industrial plant' see PARA 214 note 7.

6 Clean Air Act 1993 s 23(1)(b).

7 As to the meaning of 'premises' see PARA 210 note 5.

8 Clean Air Act 1993 s 23(1)(c).

9 Clean Air Act 1993 s 23(1). The penalty is a fine not exceeding level 3 on the standard scale: s 23(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Section 23(1), in its application to a smoke control area in which the operation of s 20 (see PARA 217) is limited by a smoke control order to specified classes of buildings, boilers or plant, has effect as if references to a building, boiler or plant were references to a building, boiler or plant of a class specified in the order: s 23(3).

The power of the Secretary of State under s 22 (see PARA 220) to suspend or relax the operation of s 20 (see PARA 217) in relation to the whole or any part of a smoke control area includes power to suspend or relax the operation of s 23(1) in relation to the whole or any part of such an area: s 23(4). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

- 10 Clean Air Act 1993 s 23(5).
- 11 Is exempted by the Clean Air Act 1993 s 20: see PARA 217.
- 12 Clean Air Act 1993 s 23(5)(a).
- 13 Clean Air Act 1993 s 23(5)(b).

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222. Notices requiring adaptations.

A local authority¹ may, by notice in writing served on the occupier or owner² of a private dwelling³ which is, or when a smoke control order⁴ comes into operation will be, within a smoke control area require the carrying out of adaptations in or in connection with the dwelling to avoid contraventions of the provisions⁵ prohibiting smoke emissions in smoke control areas⁶.

The adaptations⁷ which may be required are the execution of any of the following works: (1) adapting or converting any fireplace⁸; (2) replacing any fireplace by another fireplace or by some other means of heating⁹ or cooking¹⁰; (3) altering any chimney¹¹ which serves any fireplace¹²; (4) providing gas ignition, electric ignition or any other special means of ignition¹³; or (5) carrying out any operation incidental to any of the operations mentioned in heads (1) to (4) above¹⁴. The works must be reasonably necessary in order to make what is in all the circumstances suitable provision for heating and cooking without contravention of the provisions prohibiting emission of smoke in smoke control areas¹⁵. In considering whether any and, if so, what works are reasonably necessary in order to make suitable provision for heating and cooking in the case of a dwelling, regard must be had to any difficulty there may be in obtaining, or in obtaining otherwise than at a high price, any fuels which would have to be used but for the execution of the works¹⁶.

1 As to the meaning of 'local authority' see PARAS 99, 217 note 1.

2 As to the meaning of 'owner' see PARA 213 note 4.

3 As to the meaning of 'private dwelling' see PARA 214 note 19.

4 As to the meaning of 'smoke control order' see PARA 217 note 2.

5 ie the provisions of the Clean Air Act 1993 s 20: see PARA 217.

6 Clean Air Act 1993 s 24(1). The provisions of the Public Health Act 1936 Pt XII (ss 275-347) (see PARA 114 et seq) with respect to appeals against, and enforcement of, notices requiring the execution of works apply in relation to any notice under the Clean Air Act 1993 s 24(1): s 24(2). Any reference in those provisions to the expenses reasonably incurred in executing the works are, in relation to a notice under s 24(1), to be read as a reference to three-tenths of those expenses or such smaller fraction of those expenses as the local authority may in any particular case determine: s 24(3). The local authority has a power of entry in relation to such work: see s 56(1), (2); and PARA 244.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

7 References in the Clean Air Act 1993 Pt III (ss 18-29) to adaptations in or in connection with a dwelling to avoid contraventions of s 20 (see PARA 217) are to be read as references to the execution of any of the works (whether in or outside the dwelling) in heads (1)-(5) in the text: s 27(1). References in s 27 to a dwelling include references to any premises or part of any premises to which s 26 (see PARA 225) applies: s 27(4). As to the meaning of 'premises' see PARA 210 note 5.

8 Clean Air Act 1993 s 27(1)(a). As to the meaning of 'fireplace' see PARA 213 note 3.

9 'Heating' in relation to a dwelling includes the heating of water: Clean Air Act 1993 s 29.

10 Clean Air Act 1993 s 27(1)(b).

11 As to the meaning of 'chimney' see PARA 211 note 3.

12 Clean Air Act 1993 s 27(1)(c).

13 Clean Air Act 1993 s 27(1)(d). For these purposes, the provision of any igniting apparatus or appliance (whether fixed or not) operating by means of gas, electricity or other special means must be treated as the execution of works: s 27(2).

14 Clean Air Act 1993 s 27(1)(e).

15 Clean Air Act 1993 s 27(1). The provisions referred to in the text are those of s 20 (see PARA 217): see s 27(1).

16 Clean Air Act 1993 s 64(5).

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223. Grants for adaptations in private dwellings.

If, after the making of a smoke control order¹ by a local authority², the owner³ or occupier⁴ of, or any person interested in, an old private dwelling⁵ which is or will be within a smoke control area as a result of the order incurs relevant expenditure⁶, and if the adaptations in question⁷ are carried out to the satisfaction of the local authority, the local authority must repay to him seven-tenths of the relevant expenditure and may, if it thinks fit, also repay to him the whole or any part of the remainder of that expenditure⁸.

1 As to the meaning of 'smoke control order' see PARA 217 note 2.

2 As to the meaning of 'local authority' see PARA 99, 217 note 1.

3 As to the meaning of 'owner' see PARA 213 note 4.

4 As to the occupier of a building see PARA 213 note 3.

5 For these purposes, 'old private dwelling' means any private dwelling other than one which either: (1) was erected after 15 August 1964 (which was the date immediately preceding the time when the enactment replaced by the Clean Air Act 1993 s 25(2) came into force); or (2) was produced by the conversion, after that date, of other premises, with or without the addition of premises erected after that date; and for the purposes of s 25(2) a dwelling or premises is not to be treated as erected or converted after that date unless the erection or conversion was begun after it: ss 25(2), 29.

6 Clean Air Act 1993 s 25(1), Sch 2 para 1(1). These provisions have effect subject to Sch 2 para 4 (see PARA 224): Sch 2 para 1(6). For these purposes, 'relevant expenditure' is expenditure on adaptations in or in connection with an old private dwelling to avoid contraventions of s 20 (see PARA 217) which: (1) is incurred before the coming into operation of the order and with the approval of the local authority given for these purposes; or (2) is reasonably incurred in carrying out adaptations required by a notice given under s 24(1) (see PARA 222): Sch 2 para 1(2). The approval of a local authority to the incurring of expenditure may be given, if the authority thinks fit in the circumstances of any particular case, after the expenditure has been incurred: Sch 2 para 1(5).

References in Pt III (ss 18-29) to expenses incurred in the execution of works include references to the cost of any fixed cooking or heating appliance installed by means of the execution of the works, notwithstanding that the appliance can be readily removed from the dwelling without injury to itself or the fabric of the dwelling: s 28(1). References in s 28 to a dwelling include references to any premises or part of any premises to which s 26 (see PARA 225) applies: s 28(3). As to the meaning of 'premises' see PARA 210 note 5. For the purposes of Pt III, a person who enters into a conditional sale agreement for the sale to him of a cooking or heating appliance is to be treated as having incurred on the date of the agreement expenditure of an amount equal to the price which would have been payable for the appliance if he had purchased it for cash on that date: s 28(2). 'Conditional sale agreement' means an agreement for the sale of goods under which: (a) the purchase price or part of it is payable by instalments; and (b) the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled: s 29.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

7 Ie the adaptations under the Clean Air Act 1993 s 27(1): see PARA 222. Except for the purposes of s 24 (see PARA 222), works which make such suitable provision as is mentioned in s 27(1) (see PARA 222) must not be treated as not being adaptations to avoid contraventions of s 20 (see PARA 217) by reason that they go beyond what is reasonably necessary for that purpose; but any expenditure incurred in executing them in excess of the expenditure which would have been reasonably incurred in doing what was reasonably necessary must be left out of account: s 27(3).

8 Clean Air Act 1993 Sch 2 para 1(3). Where relevant expenditure is incurred by the occupier of a private dwelling who is not an owner of the dwelling and the adaptations in question consist of or include the provision of any cooking or heating appliance which can be readily removed from the dwelling without injury to itself or the fabric of the dwelling, the following provisions have effect as respects so much of the expenditure as represents the cost of the appliance, that is to say: (1) not more than seven-twentieths of that part of that expenditure may be repaid until two years from the coming into operation of the order; and (2) any further repayment of that part of that expenditure may be made only if the appliance has not by then been removed from the dwelling and, if made, is to be made to the person who is the occupier of the dwelling at the end of the two years: Sch 2 para 1(4). As to the meaning of 'heating' see PARA 222 note 9. Expenditure incurred on heating appliances which are unsuitable as tending to impose undue strain on the available fuel resources may be excluded: Sch 2 paras 2, 3.

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224. Exchequer contributions towards adaptation expenses.

The Secretary of State¹ may, out of money provided by Parliament², make a contribution towards the following expenses of a local authority³ (if approved by him), namely: (1) any expenses of the local authority in making grants for adaptations⁴; (2) any expenses incurred by it in making, in or in connection with old private dwellings⁵ owned by it or under its control, adaptations⁶ to avoid contraventions of the provisions prohibiting emission of smoke in smoke control areas⁷; and (3) any expenses incurred by it in carrying out adaptations required by notices⁸ in or in connection with old private dwellings⁹. A contribution under these provisions in respect of any expenses must be a single payment equal: (a) in the case of expenses mentioned in head (1) above, to four-sevenths of the amount of the expenses; (b) in the case of expenses mentioned in head (2) above, to two-fifths of those expenses; and (c) in the case of expenses mentioned in head (3) above, to four-sevenths of the amount arrived at by deducting the recoverable amount¹⁰ from the amount of those expenses¹¹.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 This provision does not apply in so far as such a sum is payable by the National Assembly for Wales: see note 1.

3 As to the meaning of 'local authority' see PARAS 99, 217 note 1.

4 Clean Air Act 1993 s 25(1), Sch 2 para 4(1)(a). The grants referred to in the text are payments made under s 25(1), Sch 2 para 1 (see PARA 223): see Sch 2 para 4(1)(a).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

5 As to the meaning of 'old private dwelling' see PARA 223 note 5. As to the meaning of 'private dwelling' see PARA 214 note 19.

6 As to adaptations see PARA 222.

7 Clean Air Act 1993 Sch 2 para 4(1)(b). The provisions referred to in the text are those of s 20 (see PARA 217): see Sch 2 para 4(1)(b).

8 I.e notices served under the Clean Air Act 1993 s 24: see PARA 222.

9 Clean Air Act 1993 Sch 2 para 4(1)(c).

10 For these purposes, 'recoverable amount' means, in relation to any expenses, the fraction of those expenses (whether three-tenths or some smaller fraction determined by the local authority, in the case of those expenses, under the Clean Air Act 1993 s 24(2) or (3) (see PARA 222)) which the local authority has power to recover from the occupier or owner by virtue of s 24(2) or (3): Sch 2 para 4(3).

11 Clean Air Act 1993 Sch 2 para 4(2).

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225. Grants for adaptations in religious and charitable premises.

If, after the making of a smoke control order¹, the owner² or occupier of certain premises³ which will be within a smoke control area as the result of the order incurs expenditure on adaptations⁴ in or in connection with the premises or part to avoid contravention of the provisions prohibiting emission of smoke in a smoke control area⁵, the local authority⁶ may, if it thinks fit, repay to him the whole or any part of that expenditure⁷.

This provision applies to any premises⁸ or part of any premises which are: (1) a place of public religious worship being, in the case of a place in England or Wales, a place which belongs to the Church of England or the Church in Wales⁹, or which is certified as required by law¹⁰ as a place of religious worship¹¹; or (2) a church hall, chapel hall or similar premises used in connection with any such place of public religious worship, and so used for the purposes of the organisation responsible for the conduct of public religious worship in that place¹²; or (3) premises or a part of any premises occupied for the purposes of an organisation (whether corporate or unincorporated) which is not established or conducted for profit¹³ and whose main objects¹⁴ are charitable¹⁵ or are otherwise concerned with the advancement¹⁶ of religion, education or social welfare¹⁷.

1 As to the meaning of 'smoke control order' see PARA 217 note 2.

2 As to the meaning of 'owner' see PARA 213 note 4.

3 I.e. any premises or part of any premises to which the Clean Air Act 1993 s 26 applies: see the text and notes 8-17.

4 As to adaptations see PARA 222.

5 I.e. the Clean Air Act 1993 s 20: see PARA 217.

6 As to the meaning of 'local authority' see PARAS 99, 217 note 1.

7 Clean Air Act 1993 s 26(1). As to references to expenses incurred in the execution of works see PARA 223 note 8.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

8 As to the meaning of 'premises' see PARA 210 note 5.

9 I.e. within the meaning of the Welsh Church Act 1914: see **ECCLESIASTICAL LAW**.

10 See **ECCLESIASTICAL LAW**. Certification, although a necessary pre-condition under the Clean Air Act 1993 s 26(2)(a) in the case of non-Anglican buildings, is not conclusive as to whether a place is one of public religious worship: cf *Rogers v Lewisham Borough Council* [1951] 2 KB 768, [1951] 2 All ER 718, CA.

11 Clean Air Act 1993 s 26(2)(a).

12 Clean Air Act 1993 s 26(2)(b).

13 The mere fact that profits are made, if they are purely incidental to the purposes of the organisation, does not deprive it of the benefit of this provision: *National Deposit Friendly Society Trustees v Skegness UDC* [1959] AC 293, [1958] 2 All ER 601, HL; *Guinness Trust (London Fund) Founded 1890 Registered 1902 v West Ham Corp* [1959] 1 All ER 482, [1959] 1 WLR 233, CA.

14 All the main objects must be as defined; if an organisation has a written constitution that alone should normally be referred to for ascertaining the objects, although the organisation's activities are relevant in cases of ambiguity; quare whether the activities are relevant in order to determine which of the objects are main objects: see *Chartered Insurance Institute v London Corpn* [1957] 2 All ER 638, [1957] 1 WLR 867, DC; *Berry v St Marylebone Corpn* [1958] Ch 406, [1957] 3 All ER 677, CA; *Working Men's Club and Institute Union Ltd v Swansea Corpn* [1959] 3 All ER 769, [1959] 1 WLR 1197, CA; *Victory (Ex-Services) Association Ltd v Paddington Borough Council* [1960] 1 All ER 498, [1960] 1 WLR 106, DC; and see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 80.

15 As to what are charitable objects see **CHARITIES** vol 8 (2010) PARA 2.

16 'Advancement' seems to mean promotion or spreading (see *United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council* [1957] 3 All ER 281, [1957] 1 WLR 1080, DC (religion), but the existence of a holiday camp may be advancement of social welfare (*Skegness UDC v Derbyshire Miners' Welfare Committee* [1959] AC 807, [1959] 2 All ER 258, HL).

17 Clean Air Act 1993 s 26(2)(c). The objects envisaged by 'the advancement of religion, education and social welfare' are such as are the concern of charitable organisations but which may fall short of charitable purposes in the strict legal sense; and an organisation which provides benefits only to its members is not 'concerned with the advancement of social welfare': see *National Deposit Friendly Society Trustees v Skegness UDC* [1959] AC 293, [1958] 2 All ER 601, HL. Altruism or benevolence in the donors of funds to the organisation is not an essential element of 'social welfare' (*Skegness UDC v Derbyshire Miners' Welfare Committee* [1959] AC 807, [1959] 2 All ER 258, HL; *Waterson v Hendon Borough Council* [1959] 2 All ER 760, [1959] 1 WLR 985), and public benefit is not the test (*General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540, [1959] 1 All ER 325, HL).

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(iv) Furnaces and Chimneys

226. Smoke from furnaces.

No furnace may be installed in a building or in any fixed boiler or industrial plant¹ unless notice of the proposal to install it has been given to the local authority² and unless the furnace is so far as practicable³ capable of being operated continuously without emitting smoke⁴ when burning fuel of a type for which the furnace was designed⁵.

Any person who installs a furnace in contravention of these provisions⁶ or on whose instructions a furnace is so installed is guilty of an offence and liable on summary conviction to a penalty⁷.

These provisions⁸ apply in relation to the attachment to a building of a boiler or industrial plant which already contains a furnace or in relation to the fixing to or installation on any land of any such boiler or plant as they apply in relation to the installation of a furnace in any fixed boiler or industrial plant⁹.

1 As to the meaning of 'fixed boiler or industrial plant' see PARA 214 note 7.

2 Clean Air Act 1993 s 4(1). As to the meaning of 'local authority' see PARA 99. Section 4 does not apply to the installation of domestic furnaces: s 4(5). 'Domestic furnace' means any furnace which is designed solely or mainly for domestic purposes, and used for heating a boiler with a maximum heating capacity of less than 16.12 kilowatts: s 64(1).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

3 As to the meaning of 'practicable' see PARA 210 note 16.

4 As to the meaning of 'smoke' see PARA 210 note 4.

5 Clean Air Act 1993 s 4(2). A furnace, boiler or industrial plant may be exempted from the operation of s 4(2) for research and investigation purposes: see PARA 211. Any furnace installed in accordance with plans and specifications submitted to, and approved for the purposes of s 4 by, the local authority is to be treated as complying with the provisions of s 4(2): s 4(3).

6 Ie the Clean Air Act 1993 s 4(1), (2): see the text and notes 1-5.

7 Clean Air Act 1993 s 4(4). In the case of a contravention of s 4(1) (see the text and notes 1-2), the penalty is a fine not exceeding level 3 on the standard scale; and in the case of a contravention of s 4(2) (see the text and notes 3-5), the penalty is a fine not exceeding level 5 on that scale: s 4(4). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

8 Ie the Clean Air Act 1993 s 4.

9 Clean Air Act 1993 s 4(6).

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227. Limits of emission of grit and dust from furnaces.

The Secretary of State¹ may by regulations² prescribe limits on the rates of emission³ of grit and dust from the chimneys⁴ of furnaces⁵. If on any day⁶ grit or dust is emitted from a chimney serving a furnace at a rate exceeding the relevant limit so prescribed⁷, the occupier⁸ of the building in which the furnace is situated is guilty of an offence⁹ and liable on summary conviction to a penalty¹⁰. In proceedings for such an offence, it is a defence to prove that the best practicable means had been used for minimising the alleged emission¹¹.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 At the date at which this volume states the law no regulations had been made under the Clean Air Act 1993 s 5 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Clean Air (Emission of Grit and Dust from Furnaces) Regulations 1971, SI 1971/162, have effect as if so made. As to the power to make regulations see PARA 207.

3 Any reference to the rate of emission of any substance or any reference which is to be understood as such a reference is, in relation to any regulations or conditions, to be construed as a reference to the quantities of that substance which may be emitted during a period specified in the regulations or conditions: Clean Air Act 1993 s 64(3).

4 As to the meaning of 'chimney' see PARA 211 note 3.

5 Clean Air Act 1993 s 5(2). Section 5 applies to any furnace other than a domestic furnace: s 5(1). As to the meaning of 'domestic furnace' see PARA 226 note 2. Any furnaces which are in the occupation of the same person and served by a single chimney are to be taken to be one furnace: s 64(6). As to furnaces see further PARA 233. If, in the case of a building containing a furnace which is served by a chimney to which there is no limit applicable under s 5(2), the occupier fails to use any practicable means there may be for minimising the emission of grit or dust from the chimney, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 5(5), (6). As to the meaning of 'practicable means' see PARA 210 note 16. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

6 As to the meaning of 'day' see PARA 214 note 4.

7 It is prescribed under the Clean Air Act 1993 s 5(2): see the text and notes 1-5.

8 As to references to the occupier of a building see PARAS 213 note 3, 233.

9 Clean Air Act 1993 s 5(3).

10 Clean Air Act 1993 s 5(6). The penalty is a fine not exceeding level 5 on the standard scale: s 5(6).

11 Clean Air Act 1993 s 5(4).

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228. Furnaces to be fitted with grit and dust arrestment plant.

A furnace other than a domestic furnace¹ may not be used in a building for certain purposes² unless the furnace is provided with plant for arresting grit and dust which has been approved by the local authority³, or which has been installed in accordance with plans and specifications submitted to and approved by the authority, and that plant is properly maintained and used⁴. If on any day⁵ a furnace is used in contravention of these provisions, the occupier⁶ of the building is guilty of an offence and liable on summary conviction to a penalty⁷.

A domestic furnace may not be used in a building for certain purposes⁸ unless the furnace is provided with plant for arresting grit and dust which has been approved by the local authority or which has been installed in accordance with plans and specifications submitted to and approved by the authority, and that plant is properly maintained and used⁹. If a furnace is used in a building in contravention of these provisions¹⁰, the occupier of the building is guilty of an offence and liable on summary conviction to a penalty¹¹.

Where a local authority determines an application for approval under these provisions¹², it must give the applicant a written notification of its decision and, in the case of a decision not to grant approval, must state its reasons for not doing so¹³. Any person who has made such an application to a local authority or is interested in a building with respect to which such an application has been made may, if he is dissatisfied with the decisions of the authority on the application, appeal within 28 days after he is notified of the decision to the Secretary of State, who may give any approval which the authority might have given¹⁴.

1 As to the meaning of 'domestic furnace' see PARA 226 note 2. As to furnaces see further PARA 233. Any furnaces which are in the occupation of the same person and served by a single chimney are to be taken to be one furnace: Clean Air Act 1993 s 64(6).

2 le: (1) to burn pulverised fuel (Clean Air Act 1993 s 6(1)(a)); or (2) to burn, at a rate of 45.4 kilograms or more an hour, any other solid matter (s 6(1)(b)); or (3) to burn, at a rate equivalent to 366.4 kilowatts or more, any liquid or gaseous matter (s 6(1)(c)). The Secretary of State may by regulations substitute for any rate mentioned in s 6(1)(b) or s 6(1)(c) such other rate as he thinks fit, but: (a) no regulations may be made so as to reduce any rate unless a draft of the regulations has been laid before and approved by each House of Parliament (s 6(3)); and (b) regulations under s 6(3) reducing any rate will not apply to a furnace which has been installed, the installation of which has been begun, or an agreement for the purchase or installation of which has been entered into, before the date on which the regulations come into force (s 6(4)). At the date at which this volume states the law no such regulations had been made. References in s 6(4) to the installation and to the purchase of a furnace are, in relation to a furnace which is already contained in any fixed boiler or industrial plant, to be read as references to attaching the boiler or plant to the building or fixing it to or installing it on any land and to purchasing it respectively: s 13(3). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the meaning of 'fixed boiler or industrial plant' see PARA 214 note 7.

3 As to the meaning of 'local authority' see PARA 99.

4 Clean Air Act 1993 s 6(1). Section 6(1) has effect subject to any exemptions prescribed or granted under s 7 (see PARA 229): s 6(2).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

5 As to the meaning of 'day' see PARA 214 note 4.

6 As to references to the occupier of a building see PARAS 213 note 3, 233.

7 Clean Air Act 1993 s 6(5). The penalty is a fine not exceeding level 5 on the standard scale: s 6(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

8 Ie: (1) to burn pulverised fuel (Clean Air Act 1993 s 8(1)(a)); or (b) to burn, at a rate of 1.02 tonnes an hour or more, solid fuel in any other form or solid waste (s 8(1)(b)).

9 Clean Air Act 1993 s 8(1).

10 Ie the Clean Air Act 1993 s 8.

11 Clean Air Act 1993 s 8(2). The penalty is a fine not exceeding level 5 on the standard scale: s 8(2).

12 Ie under the Clean Air Act 1993 s 6 (see the text and notes 1-7) or s 8 (see the text and notes 9-11).

13 Clean Air Act 1993 s 9(1).

14 Clean Air Act 1993 s 9(2). An approval given by the Secretary of State under s 9 has the like effect as an approval of the local authority: s 9(3).

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229. Exemptions from grit and dust arrestment requirements.

The Secretary of State¹ may by regulations² provide that furnaces³ of any class prescribed in the regulations are, while used for a purpose so prescribed, exempted from the grit and dust arrestment requirements⁴.

If, on the application of the occupier⁵ of a building, a local authority⁶ is satisfied that the emission of grit and dust from any chimney⁷ serving a furnace in the building will not be prejudicial to health or a nuisance if the furnace is used for a particular purpose without compliance with the statutory provisions relating to arrestment plant⁸, it may exempt the furnace from the operation of those provisions while used for that purpose⁹.

If on any day¹⁰ a furnace which is exempt from the operation of those provisions is used for a purpose other than a prescribed purpose or, as the case may be, a purpose for which the furnace may be used¹¹, the occupier of the building is guilty of an offence and liable on summary conviction to a penalty¹².

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 At the date at which this volume states the law no such regulations had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Clean Air (Arrestment Plant) (Exemption) Regulations 1969, SI 1969/1262, have effect as if so made. As to the power to make regulations see PARA 207.

3 As to furnaces see further PARA 233. Any furnaces which are in the occupation of the same person and served by a single chimney are to be taken to be one furnace: Clean Air Act 1993 s 64(6).

4 Clean Air Act 1993 s 7(1). The requirements mentioned in the text are the requirements in s 6(1) (see PARA 228): see s 7(1).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

5 As to references to the occupier of a building occupied see PARAS 213 note 3, 233.

6 As to the meaning of 'local authority' see PARA 99.

7 As to the meaning of 'chimney' see PARA 211 note 3.

8 I.e. the Clean Air Act 1993 s 6(1): see PARA 228.

9 Clean Air Act 1993 s 7(2). If the local authority to which the application is duly made for an exemption under s 7(2) fails to determine the application and give a written notice of its decision to the applicant within eight weeks of receiving the application or such longer period as may be agreed in writing between the applicant and the authority, the furnace is treated as having been granted an exemption from the operation of s 6(1) (see PARA 228) while used for the purpose specified in the application: s 7(3). If the authority decides not to grant an exemption under s 7(2), it must give the applicant a written notification of its decision stating its reasons, and the applicant may within 28 days of receiving the notification appeal against the decision to the Secretary of State: s 7(4). On such an appeal under s 7 the Secretary of State may confirm the decision appealed against, or may grant the exemption applied for or vary the purpose for which the furnace to which the application relates may be used without compliance with s 6(1), and must give the appellant a written notification of his decision, stating his reasons: s 7(5).

10 As to the meaning of 'day' see PARA 214 note 4.

11 le by virtue of the Clean Air Act 1993 s 7(2), (3) or (5): see the text and note 7.

12 Clean Air Act 1993 s 7(6). The penalty is a fine not exceeding level 5 on the standard scale: s 7(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/5. AIR QUALITY AND AIR POLLUTION/(4) CLEAN AIR/(iv) Furnaces and Chimneys/230. Measurement of grit and dust emissions.

230. Measurement of grit and dust emissions.

If a furnace¹ in a building is used for certain purposes² the local authority³ may, by notice in writing served on the occupier of the building, direct that⁴ the occupier of the building⁵ must comply with such requirements as may be prescribed⁶ as to: (1) making and recording measurements from time to time of the grit, dust and fumes⁸ emitted from the furnace⁹; (2) making adaptations for that purpose to the chimney¹⁰ serving the furnace¹¹; (3) providing and maintaining apparatus for making and recording the measurements¹²; and (4) informing the local authority of the results obtained from the measurements or otherwise making those results available to it¹³.

If the occupier of the building fails to comply with these requirements, he is guilty of an offence and liable to a penalty¹⁴.

The occupier of a building who by virtue of these requirements is under a duty to make and record measurements of grit, dust and fumes emitted from a furnace in the building must permit the local authority to be represented during the making and recording of those measurements¹⁵.

The occupier of any building in which certain furnaces¹⁶ are situated may, by notice in writing given to the local authority, request that authority to make and record measurements of the grit, dust and fumes emitted from the furnace¹⁷. While such a notice is in force: (a) the local authority may from time to time make and record measurements of the grit, dust and fumes emitted from the furnace¹⁸; and (b) the occupier is not under a duty to comply with any requirements of regulations¹⁹ in relation to the furnace, except those made in relation to making adaptations to the chimney serving the furnace²⁰. Any such notice given by the occupier of a building may be withdrawn by a subsequent notice in writing given to the local authority by him or any subsequent occupier of that building²¹.

1 As to furnaces see further PARA 233. Any furnaces which are in the occupation of the same person and served by a single chimney are to be taken to be one furnace: Clean Air Act 1993 s 64(6).

2 I.e: (1) to burn pulverised fuel (Clean Air Act 1993 s 10(1)(a)); (2) to burn, at a rate of 45.4 kilograms or more an hour, any other solid matter (s 10(1)(b)); or (3) to burn, at a rate equivalent to 366.4 kilowatts or more, any liquid or gaseous matter (s 10(1)(c)). The Secretary of State may by regulations substitute for any rate mentioned in s 10(1)(b) or s 10(1)(c) such other rate as he thinks fit; but regulations may not be made so as to reduce any rate unless a draft of the regulations has been laid before and approved by each House of Parliament: s 10(5). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the meaning of 'local authority' see PARA 99.

4 Clean Air Act 1993 s 10(1). Any direction given by a local authority under s 10(1) with respect to a furnace in a building may be revoked by the local authority by a subsequent notice in writing served on the occupier of the building, without prejudice, however, to its power to give another such direction: s 10(6). Furnaces may be exempted from these provisions for research purposes: see PARA 211.

5 As to references to the occupier of a building see PARAS 213 note 3, 233.

6 For these purposes, 'prescribed' means prescribed (whether generally or for any class of furnace) by regulations made by the Secretary of State: Clean Air Act 1993 s 10(2). At the date at which this volume states

the law no regulations had been made under s 10(2) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Clean Air (Measurement of Grit and Dust from Furnaces) Regulations 1971, SI 1971/161, have effect as if so made. As to the power to make regulations see PARA 207.

7 Clean Air Act 1993 s 10(2). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

8 As to the meaning of 'fumes' see PARA 211 note 3.

9 Clean Air Act 1993 s 10(2)(a).

10 As to the meaning of 'chimney' see PARA 211 note 3.

11 Clean Air Act 1993 s 10(2)(b).

12 Clean Air Act 1993 s 10(2)(c).

13 Clean Air Act 1993 s 10(2)(d).

14 Clean Air Act 1993 s 10(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to cumulative penalties on continuance in accordance with s 50 (see PARA 246): see s 10(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

15 Clean Air Act 1993 s 10(4).

16 The Clean Air Act 1993 s 11 applies to any furnace to which s 10(2) (see the text and notes 5-13) for the time being applies and which is used: (1) to burn, at a rate less than 1.02 tonnes an hour, solid matter other than pulverised fuel (s 11(1)(a)); or (2) to burn, at a rate of less than 8.21 megawatts, any liquid or gaseous matter (s 11(1)(b)). A direction under s 10(1) (see the text and notes 1-4) applying s 10(2) (see notes 5-13) to a furnace which is used as mentioned in s 11(1)(a) or s 11(1)(b) must contain a statement of the effect of s 11(1)-(3): s 11(4).

17 Clean Air Act 1993 s 11(2).

18 Clean Air Act 1993 s 11(3)(a).

19 Ie the regulations made under the Clean Air Act 1993 s 10(2): see note 6.

20 Clean Air Act 1993 s 11(3)(b). The regulations made in relation to making adaptations to the chimney serving the furnace are those made under s 10(2)(b) (see note 6): see s 11(3)(b).

21 Clean Air Act 1993 s 11(3).

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231. Information about furnaces and fuel consumed.

For the purpose of enabling the local authority¹ properly to perform its functions², the local authority may, by notice in writing served on the occupier of any building³, require him to furnish to the authority, within 14 days or such longer time as may be limited by the notice, such information as to the furnaces⁴ in the building and the fuel or waste burned in those furnaces as the authority may reasonably require for that purpose⁵. Any person who, having been duly served with such a notice, fails to comply with the requirements of the notice within the time limited, or furnishes any information in reply to the notice which he knows to be false in a material particular, is guilty of an offence and liable on summary conviction to a penalty⁶.

1 As to the meaning of 'local authority' see PARA 99.

2 Ie under and in connection with the Clean Air Act 1993 ss 5-11: see PARAS 227-230.

3 As to references to the occupier of a building see PARAS 213 note 3, 233.

4 As to furnaces see further PARA 233. Any furnaces which are in the occupation of the same person and served by a single chimney are to be taken to be one furnace: Clean Air Act 1993 s 64(6).

5 Clean Air Act 1993 s 12(1). The information must be reasonably required to enable the authority properly to perform its functions under and in connection with ss 5-11 (see PARAS 227-230): s 12(1).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

6 Clean Air Act 1993 s 12(2). The penalty is a fine not exceeding level 5 on the standard scale: s 12(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/5. AIR QUALITY AND AIR POLLUTION/(4) CLEAN AIR/(iv) Furnaces and Chimneys/232. Fumes and gases.

232. Fumes and gases.

The Secretary of State¹ may by regulations²: (1) apply all or any of the statutory provisions relating to the emission of grit and dust from furnaces³, the provision of arrestment plants for new non-domestic furnaces⁴, colliery spoilbanks⁵, railway engines⁶, vessels⁷ and Crown premises⁸ to fumes⁹ or prescribed gases¹⁰ or both as they apply to grit and dust¹¹; and (2) apply all or any of the statutory provisions requiring new furnaces to be smokeless¹² to fumes or prescribed gases as they apply to smoke¹³; and (3) apply all or any of the statutory provisions requiring local authorities to make and record measurements of grit, dust and fumes by the local authorities¹⁴ to prescribed gases as they apply to grit and dust¹⁵. The regulations may be subject, in each case, to such exceptions and modifications as the Secretary of State thinks expedient¹⁶.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 No regulations may be made under the Clean Air Act 1993 s 47 unless a draft of the regulations has been laid before and approved by each House of Parliament: s 47(2). At the date at which this volume states the law no regulations had been made under s 47. As to the power to make regulations see PARA 207.

3 Ie the Clean Air Act 1993 s 5: see PARA 227.

4 Ie the Clean Air Act 1993 s 6 (see PARA 228) and the exemptions to s 6 under s 7 (see PARA 229).

5 Ie the Clean Air Act 1993 s 42(4): see PARA 238.

6 Ie the Clean Air Act 1993 s 43(5): see PARA 216.

7 Ie the Clean Air Act 1993 s 44(6): see PARA 216.

8 Ie the Clean Air Act 1993 s 46(1): see PARA 210.

9 As to the meaning of 'fumes' see PARA 211 note 3.

10 For these purposes, 'prescribed' means prescribed in regulations under the Clean Air Act 1993 s 47 (see note 2): s 47(4). 'Gas' includes vapour and moisture precipitated from vapour: s 47(4). In the application of any of the provisions of the Clean Air Act 1993 to prescribed gases by virtue of regulations made under s 47, any reference to the rate of emission of any substance must be construed as a reference to the percentage by volume or by mass of the gas which may be emitted during a period specified in the regulations: s 47(3).

11 Clean Air Act 1993 s 47(1)(a). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

12 Ie the Clean Air Act 1993 s 4: see PARA 226.

13 Clean Air Act 1993 s 47(1)(b). As to the meaning of 'smoke' see PARA 210 note 4.

14 Ie under the Clean Air Act 1993 s 11: see PARA 230.

15 Clean Air Act 1993 s 47(1)(c).

16 Clean Air Act 1993 s 47(1).

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233. Grit and dust from outdoor furnaces.

The statutory provisions as to grit and dust from furnaces¹ apply with modifications² in relation to the furnace of any fixed boiler or industrial plant³ as they apply in relation to a furnace in a building⁴.

1 I.e. the Clean Air Act 1993 ss 5-12: see PARAS 227-231.

2 Thus references in the Clean Air Act 1993 ss 5-12 to the occupier of the building are, in relation to a furnace falling within s 13(1) (see the text and note 4), to be read as references to the person having possession of the boiler or plant: s 13(2).

3 As to the meaning of 'fixed boiler or industrial plant' see PARA 214 note 7.

4 Clean Air Act 1993 s 13(1). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

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234. Height of chimneys.

A local authority¹ must reject the plans for the erection or extension of certain buildings deposited with it in accordance with building regulations², unless it is satisfied that the height of the chimney as shown on the plans will be sufficient to prevent, so far as practicable³, the smoke, grit, dust or gases from becoming prejudicial to health or a nuisance having regard to⁴: (1) the purpose of the chimney⁵; (2) the position and descriptions of buildings near it⁶; (3) the levels of the neighbouring ground⁷; and (4) any other matters requiring consideration in the circumstances⁸. If a local authority rejects plans under these provisions, the notice given⁹ must specify that the plans have been so rejected and any person interested in the building may appeal to the Secretary of State¹⁰. On such an appeal, the Secretary of State may confirm or cancel the rejection and, where he cancels the rejection, may, if he thinks it necessary, direct that the time for rejecting the plans otherwise than under these provisions may be extended so as to run from the date on which his decision is notified to the local authority¹¹.

1 As to the meaning of 'local authority' see PARA 99.

2 The provisions of the Clean Air Act 1993 s 16 apply where plans for the erection or extension of a building outside Greater London or in an outer London borough, other than a building used or to be used wholly for one or more of the following purposes, that is to say: (1) as a residence or residences; (2) as a shop or shops; or (3) as an office or offices, are in accordance with building regulations deposited with the local authority and the plans show that it is proposed to construct a chimney, other than one serving a furnace, for carrying smoke, grit, dust or gases from the building: s 16(1). As to the meaning of 'chimney' see PARA 211 note 3. As to the meaning of 'smoke' see PARA 210 note 4. As to building regulations see **BUILDING**.

3 As to the meaning of 'practicable' see PARA 210 note 16.

4 Clean Air Act 1993 s 16(2). For the purposes of the operation of s 16, no account is to be taken of any radioactivity possessed by any substance or article or by any part of any premises: see the Radioactive Substances Act 1993 s 40, Sch 3 Pt I; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1463.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

5 Clean Air Act 1993 s 16(2)(a).

6 Clean Air Act 1993 s 16(2)(b).

7 Clean Air Act 1993 s 16(2)(c).

8 Clean Air Act 1993 s 16(2)(d).

9 Ie under the Building Act 1984 s 16(6): see **BUILDING** vol 4(2) (2002 Reissue) PARA 329.

10 Clean Air Act 1993 s 16(3). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

11 Clean Air Act 1993 s 16(4).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/5. AIR QUALITY AND AIR POLLUTION/(4) CLEAN AIR/(iv) Furnaces and Chimneys/235. Height of furnace chimneys.

235. Height of furnace chimneys.

An occupier of a building¹ or a person having possession of a fixed boiler or industrial plant,² other than an exempted boiler or plant³, must not knowingly cause or permit a furnace⁴ to be used for certain purposes⁵ unless the height of the chimney⁶ serving the furnace has been approved⁷ and any conditions subject to which the approval was granted are complied with⁸. If on any day⁹ the occupier of a building or a person having possession of any boiler or plant contravenes these provisions he is guilty of an offence¹⁰ and liable on summary conviction to a penalty¹¹.

A local authority must not approve the height of a chimney unless it is satisfied that its height will be sufficient to prevent, so far as practicable¹², the smoke¹³, grit, dust, gases or fumes¹⁴ emitted from the chimney from becoming prejudicial to health or a nuisance having regard to¹⁵: (1) the purpose of the chimney¹⁶; (2) the position and descriptions of buildings near it¹⁷; (3) the levels of the neighbouring ground¹⁸; and (4) any other matters requiring consideration in the circumstances¹⁹. Approval may be granted without qualification or subject to conditions as to the rate or quality, or the rate and quality, of emissions from the chimney²⁰.

If the local authority to whom an application is duly made for approval fails to determine the application and to give a written notification of its decision within four weeks to the applicant or such longer period as may be agreed in writing between the applicant²¹ and the authority, the approval applied for is treated as having been granted without qualification²². If the local authority decides not to approve the height of a chimney, or to attach conditions to its approval, it must give the applicant a written notification of its decision which²³: (a) states its reasons for that decision²⁴; and (b) in the case of a decision not to approve the height of the chimney, specifies the lowest height (if any) which it is prepared to approve without qualification or the lowest height which it is prepared to approve if approval is granted subject to any specified conditions, or (if it thinks fit) both²⁵. The applicant may within 28 days of receiving such notification appeal against the local authority's decision to the Secretary of State²⁶. On an appeal, the Secretary of State may confirm the decision appealed against or he may approve the height of the chimney without qualification or subject to conditions as to the rate or quality, or the rate and quality, of emissions from the chimney or cancel any conditions imposed by the local authority or substitute for any conditions so imposed any other conditions which the authority had power to impose²⁷. The Secretary of State must give the appellant a written notification of his decision on such an appeal which: (i) states his reasons for the decision; and (ii) in the case of a decision not to approve the height of the chimney, specifies the lowest height (if any) which he is prepared to approve without qualification, or the lowest height which he is prepared to approve if approval is granted subject to any specified conditions, or (if he thinks fit) both²⁸.

1 As to the occupier of a building see PARA 213 note 3.

2 As to the meaning of 'fixed boiler or industrial plant' see PARA 214 note 7.

3 For these purposes, 'exempted boiler or plant' means a boiler or plant which is used or to be used wholly for any purpose prescribed in regulations made by the Secretary of State: Clean Air Act 1993 s 14(7). At the date at which this volume states the law no regulations had been made under s 14(7) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Clean Air (Height of Chimneys) (Exemption) Regulations 1969, SI 1969/411, have effect as if so made. As to the power to make regulations see PARA 207. As to the Secretary of

State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Any furnaces which are in the occupation of the same person and served by a single chimney are to be taken to be one furnace: Clean Air Act 1993 s 64(6).

5 le: (1) to burn pulverised fuel; (2) to burn, at a rate of 45.4 kilograms or more an hour, any other solid matter; or (3) to burn, at a rate equivalent to 366.4 kilowatts or more, any liquid or gaseous matter: Clean Air Act 1993 s 14(2).

6 As to the meaning of 'chimney' see PARA 211 note 3.

7 The height of a chimney is approved for the purposes of the Clean Air Act 1993 s 14 if approval is granted by the local authority or the Secretary of State under s 15 (see the text and notes 12-28): s 14(7). As to the meaning of 'local authority' see PARA 99.

8 Clean Air Act 1993 s 14(2), (4). Section 14 applies to any furnace served by a chimney: s 14(1).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

9 As to the meaning of 'day' see PARA 214 note 4.

10 Clean Air Act 1993 s 14(3), (5). Section 14(5) makes reference to a contravention of s 14(3), but it is submitted that this should be read as a reference to s 14(4).

11 Clean Air Act 1993 s 14(6). The penalty is a fine not exceeding level 5 on the standard scale: s 14(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

12 As to the meaning of 'practicable' see PARA 210 note 16.

13 As to the meaning of 'smoke' see PARA 210 note 4.

14 As to the meaning of 'fumes' see PARA 211 note 3.

15 Clean Air Act 1993 s 15(2). As to smoke as a statutory nuisance see **NUISANCE** vol 78 (2010) PARAS 115, 166.

16 Clean Air Act 1993 s 15(2)(a).

17 Clean Air Act 1993 s 15(2)(b).

18 Clean Air Act 1993 s 15(2)(c).

19 Clean Air Act 1993 s 15(2)(d).

20 Clean Air Act 1993 s 15(3). As to rates of emission see PARA 227 note 3.

21 References to 'the applicant' are, in a case where the original applicant notifies the local authority that his interest in the application has been transferred to another person, to be read as references to that other person: Clean Air Act 1993 s 15(9).

22 Clean Air Act 1993 s 15(4).

23 Clean Air Act 1993 s 15(5).

24 Clean Air Act 1993 s 15(5)(a).

25 Clean Air Act 1993 s 15(5)(b).

26 Clean Air Act 1993 s 15(6).

27 Clean Air Act 1993 s 15(7).

28 Clean Air Act 1993 s 15(8).

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(v) Fuel, Cable Burning and Colliery Spoilbanks

236. Composition of fuel.

For the purpose of limiting or reducing air pollution, the Secretary of State¹ may by regulations² impose requirements as to the composition and contents of any fuel of a kind used in motor vehicles and, where such requirements are in force, prevent or restrict the production, treatment, distribution, import, sale or use of any fuel which in any respect fails to comply with the requirements and which is for use in the United Kingdom³. Such regulations: (1) in imposing requirements as to the composition and contents of any fuel, may apply standards, specifications, descriptions or tests laid down in documents not forming part of the regulations⁴; and (2) where fuel is subject to such requirements, may, in order that persons to whom the fuel is supplied are afforded information as to its composition or contents, impose requirements for securing that the information is displayed at such places and in such manner as may be prescribed by the regulations⁵. It is the duty of the Secretary of State, before he makes any such regulations, to consult such persons appearing to him to represent manufacturers and users of motor vehicles, such persons appearing to him to represent the producers and users of fuel for motor vehicles, and such persons appearing to him to be conversant with problems of air pollution, as he considers appropriate⁶.

For the purpose of limiting or reducing air pollution, the Secretary of State may by regulations⁷ impose limits on the sulphur content of oil fuel⁸ which is used in furnaces or engines⁹. Such regulations may: (a) prescribe the kinds of oil fuel, and the kinds of furnaces and engines, to which the regulations are to apply¹⁰; (b) apply standards, specifications, descriptions or tests laid down in documents not forming part of the regulations¹¹; and (c) make different provision for different areas¹². Before he makes any such regulations, it is the duty of the Secretary of State to consult such persons appearing to him to represent producers and users of oil fuel, such persons appearing to him to represent manufacturers and users of plant and equipment for which oil fuel is used, and such persons appearing to him to be conversant with problems of air pollution, as he considers appropriate¹³.

Regulations about content of motor fuel¹⁴ or about sulphur content of oil fuel for furnaces or engines¹⁵ may authorise the Secretary of State to confer exemptions from any provision of the regulations¹⁶. A person who contravenes or fails to comply with any provision of such regulations is guilty of an offence and liable to a penalty¹⁷. Such regulations may, subject to any provision to the contrary in the regulations, apply to fuel used for, and to persons in, the public service of the Crown as they apply to fuel used for other purposes and to other persons¹⁸.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 For such regulations see the Motor Fuel (Composition and Content) Regulations 1999, SI 1999/3107 (amended by SI 2001/3896; SI 2003/3078; and SI 2007/1608); and see also PARA 190. As to the power to make regulations see PARA 207.

3 Clean Air Act 1993 s 30(1). In *Budden v BP Oil Ltd and Shell Oil Ltd* (1980) 124 Sol Jo 376, CA, it was held that an action could not be founded on negligence in respect of lead pollution caused by petrol which complied with the legislation.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 Clean Air Act 1993 s 30(3)(a).

5 Clean Air Act 1993 s 30(3)(b).

6 Clean Air Act 1993 s 30(2). It is the duty of every local weights and measures authority to enforce the provisions of regulations under s 30 within its area, and the Trade Descriptions Act 1968 s 26(2) (reports and inquiries) applies as respects those authorities' functions under the Clean Air Act 1993 s 30(4) as it applies to its functions under that Act: s 30(4) (amended by the Statute Law (Repeals) Act 1998). The Trade Descriptions Act 1968 s 27 (power to make test purchases), s 28 (power to enter premises and inspect and seize goods and documents), s 29 (obstruction of authorised officers) and s 30 (notice of test) apply in relation to the enforcement of regulations under the Clean Air Act 1993 s 30 as they apply to the enforcement of the Trade Descriptions Act 1968, and s 33 applies to the exercise of powers under s 28 as applied by the Clean Air Act 1993 s 30(5): s 30(5). See further **SALE OF GOODS AND SUPPLY OF SERVICES**. References to an offence under the Trade Descriptions Act 1968 in those provisions as applied by the Clean Air Act 1993 s 30(5) are to be construed as references to an offence under the Clean Air Act 1993 s 32 (see the text and notes 17-19) relating to regulations under s 30: s 30(5) (amended by the Statute Law (Repeals) Act 2004). As to weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 16 et seq.

7 At the date at which this volume states the law no such regulations had been made. See, however, the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007, SI 2007/79; and see also PARA 190. As to the power to make regulations see PARA 207.

8 For these purposes, 'oil fuel' means any liquid petroleum product produced in a refinery: Clean Air Act 1993 s 31(5).

9 Clean Air Act 1993 s 31(1).

10 Clean Air Act 1993 s 31(3)(a).

11 Clean Air Act 1993 s 31(3)(b).

12 Clean Air Act 1993 s 31(3)(c). This provision is expressed to be without prejudice to the generality of s 63(1)(a) (see PARA 207): see s 31(3)(c).

13 Clean Air Act 1993 s 31(2). It is the duty: (1) of every local authority to enforce the provisions of regulations under s 31 within its area, except in relation to a furnace which is: (a) part of a process subject to the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed); or (b) part of an installation subject to regulation by the Environment Agency under regulations made under the Pollution Prevention and Control Act 1999 s 2 (see PARA 186 et seq); and (2) of the inspectors appointed under the Environmental Protection Act 1990 Pt I (prospectively repealed) to enforce those provisions in relation to furnaces within head (1)(a) above and of the Environment Agency to enforce those provisions in relation to furnaces within head (1)(b) above: Clean Air Act 1993 s 31(4) (amended by SI 2000/1973). As to the prospective repeal of the Environmental Protection Act 1990 Pt I see PARA 159 note 2. As to the meaning of 'local authority' see PARA 99. As to the Environment Agency see PARA 68 et seq.

14 Ie under the Clean Air Act 1993 s 30: see the text and notes 1-6.

15 Ie under the Clean Air Act 1993 s 31: see the text and notes 7-13.

16 Clean Air Act 1993 s 32(1).

17 Clean Air Act 1993 s 32(2). The penalty on conviction on indictment is a fine, and on summary conviction is a fine not exceeding the statutory maximum; but the regulations may in any case exclude liability to conviction on indictment or reduce the maximum fine on summary conviction: Clean Air Act 1993 s 32(2). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

18 Clean Air Act 1993 s 32(3). A local authority is not entitled by virtue of s 32(3) to exercise, in relation to fuel used for, and persons in the public service of, the Crown, any power conferred on the authority by virtue of ss 56-58 (see PARAS 243-245): s 32(4).

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237. Cable burning.

A person who burns insulation from a cable with a view to recovering metal from the cable is guilty of an offence unless the burning is part of a process subject to Part I of the Environmental Protection Act 1990¹ or an activity subject to regulations² under the Pollution Prevention and Control Act 1999³. A person guilty of such an offence is liable on summary conviction to a penalty⁴.

1 le the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed). As to the prospective repeal of Pt I see PARA 159 note 2.

2 le regulations under the Pollution Prevention and Control Act 1999 s 2: see PARA 170 et seq.

3 Clean Air Act 1993 s 33(1) (amended by the Pollution Prevention and Control Act 1999 Sch 2 paras 9, 10). As from a day to be appointed, the reference in the Clean Air Act 1993 s 33(1) to the Environmental Protection Act 1990 Pt I is repealed by the Pollution Prevention and Control Act 1999 Sch 3. At the date at which this volume states the law no such day had been appointed.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 Clean Air Act 1993 s 33(2). The penalty is a fine not exceeding level 5 on the standard scale: s 33(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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238. Colliery spoilbanks.

The owner¹ of a mine² or quarry³ from which coal or shale has been, is being or is to be got must employ all practicable means⁴ for preventing combustion of refuse deposited from the mine or quarry, and for preventing or minimising the emission of smoke⁵ and fumes⁶ from such refuse⁷. If he fails to do so he is guilty of an offence⁸ and liable to a penalty⁹.

1 'Owner' has the same meaning as in the Mines and Quarries Act 1954 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 512): Clean Air Act 1993 s 42(6).

2 'Mine' has the same meaning as in the Mines and Quarries Act 1954 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 5): Clean Air Act 1993 s 42(6).

3 The Clean Air Act 1993 provides that 'quarry' has the same meaning as in the Mines and Quarries Act 1954; however, provisions relating to quarries are now mainly contained in the Quarries Regulations 1999, SI 1999/2024 (see **MINES, MINERALS AND QUARRIES**): see the Clean Air Act 1993 s 42(6). See **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 6.

4 As to the meaning of 'practicable means' see PARA 210 note 16.

5 As to the meaning of 'smoke' see PARA 210 note 4.

6 As to the meaning of 'fumes' see PARA 211 note 3.

7 Clean Air Act 1993 s 42(1), (2). Neither the provisions of the Environmental Protection Act 1990 Pt III (ss 79-84) nor any provision of the Clean Air Act 1993 Pt I (ss 1-3), Pt II (ss 4-17) or Pt III (ss 18-29) apply in relation to smoke, grit or dust from the combustion of refuse deposited from any mine or quarry to which the provisions of s 42 apply: s 42(4).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

8 Clean Air Act 1993 s 42(2).

9 Clean Air Act 1993 s 42(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to cumulative penalties on continuance in accordance with s 50 (see PARA 246): see s 42(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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(vi) Obtaining Information about Air Pollution

239. Research, publicity and obtaining information.

A local authority¹ may: (1) undertake, or contribute towards the cost of, investigation and research relevant to the problem of air pollution²; (2) arrange for the publication of information on that problem³; (3) arrange for the delivery of lectures and addresses, and the holding of discussions, on that problem⁴; (4) arrange for the display of pictures, cinematograph films or models, or the holding of exhibitions, relating to that problem⁵; (5) prepare or join in or contribute to the cost of the preparation of pictures, films, models or exhibitions to be so displayed or held⁶. In any civil or criminal proceedings⁷ brought against a local authority, or any member or officer of a local authority, on the grounds that any information has been published, it is a defence to show that it was published in compliance with these provisions⁸.

Local authorities may obtain information about the emission of pollutants and other substances into the air⁹:

- 306 (a) by issuing notices under the provisions relating to emissions from premises¹⁰;
- 307 (b) by measuring¹¹ and recording the emissions and for that purpose entering on any premises¹² whether by agreement or in exercise of the power conferred by the provisions relating to rights of entry and inspection¹³;
- 308 (c) by entering into arrangements with occupiers of premises under which they measure and record emissions on behalf of the local authority¹⁴.

So long as a local authority exercises any of its powers under these provisions¹⁵, it must from time to time consult certain persons about the way in which it exercises those powers¹⁶ and about the extent to which, and the manner in which, any information collected under those powers ought to be made available to the public¹⁷. The persons to be consulted are: (i) such persons carrying on any trade or business in the authority's area or such organisations appearing to the authority to be representative of those persons¹⁸; and (ii) such persons appearing to the authority to be conversant with problems of air pollution or to have an interest in local amenity¹⁹, as appear to the authority to be appropriate²⁰. The consultations may take place as the authority thinks necessary, but not less than twice in each financial year²¹.

1 As to the meaning of 'local authority' see PARA 99.

2 Clean Air Act 1993 s 34(1)(a). Certain functions under s 34 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

3 Clean Air Act 1993 s 34(1)(b). A local authority must ensure that material published is presented in such a way that no information relating to a trade secret is disclosed except with the consent in writing of a person authorised to disclose it: s 34(2). Breach of this duty is actionable: s 34(3).

4 Clean Air Act 1993 s 34(1)(c).

5 Clean Air Act 1993 s 34(1)(d).

6 Clean Air Act 1993 s 34(1)(e).

7 Ie whether or not arising under the Clean Air Act 1993.

8 Clean Air Act 1993 s 34(4). The reference in the text is a reference to compliance with s 34(1), (2): see s 34(4).

9 Clean Air Act 1993 s 35(1). References to the emission of substances into the atmosphere are to be construed as applying to substances in a gaseous or liquid or solid state or any combination of those states: s 40(a).

Nothing in s 35 authorises a local authority to investigate emissions from any process subject to the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) or activity subject to regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARA 186 et seq) otherwise than by issuing notices under the Clean Air Act 1993 s 36 (see PARA 240) or by exercising the powers conferred on the authority by s 34(1)(a) without entering the premises concerned: s 35(3) (amended by the Pollution Prevention and Control Act 1999 Sch 2 paras 9, 11). As from a day to be appointed, the reference in the Clean Air Act 1993 s 35(3) to the Environmental Protection Act 1990 Pt I is repealed by the Pollution Prevention and Control Act 1999 Sch 3. At the date at which this volume states the law no such day had been appointed. As to the prospective repeal of the Environmental Protection Act 1990 Pt I see PARA 159 note 2.

10 Clean Air Act 1993 s 35(1)(a). The reference in the text is a reference to the provisions of s 36 (see PARA 240): see s 35(1)(a).

11 Any reference to measurement includes a reference to the taking of samples: Clean Air Act 1993 s 40(b).

12 References to premises in the Clean Air Act 1993 s 35(1)(b), (c) do not include private dwellings or caravans: s 35(1) proviso. As to the meaning of 'premises' see PARA 210 note 5. As to the meaning of 'private dwelling' see PARA 214 note 19. 'Caravan' means a caravan within the meaning of the Caravan Sites and Control of Development Act 1960 Pt I (ss 1-32), disregarding the amendment made by the Caravan Sites Act 1968 s 13(2), which usually and for the time being is situated on a caravan site within the meaning of that Act (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1031 et seq): Clean Air Act 1993 s 64(1).

13 Clean Air Act 1993 s 35(1)(b). The provisions referred to in the text are those of s 56 (see PARA 244): see s 35(1)(b). A local authority is not entitled to exercise the power of entry under s 35(1)(b) unless: (1) the authority has given to the occupier of the premises a notice in writing specifying the kind of emissions in question and the steps it proposes to take on the premises for the purpose of measuring and recording emissions of that kind and stating that it proposes to exercise that power for that purpose unless the occupier requests the authority to serve on him a notice under s 36 (see PARA 240) with respect to the emissions (s 35(2)(a)); and (2) a period of 21 days beginning with the day on which the notice was given has expired (s 35(2)(b)). Nor is the authority entitled to exercise that power if, during those 21 days, the occupier gives a notice to the authority requesting it to serve on him a notice under s 36 (see PARA 240): s 35(2).

14 Clean Air Act 1993 s 35(1)(c). See also note 12.

15 Ie under the Clean Air Act 1993 s 35(1): see notes 1-14.

16 Ie the powers under the Clean Air Act 1993 s 35(1) (see notes 1-14) and s 36 (see PARA 240).

17 Clean Air Act 1993 s 35(4).

18 Clean Air Act 1993 s 35(5)(a).

19 Clean Air Act 1993 s 35(5)(b).

20 Clean Air Act 1993 s 35(5).

21 Clean Air Act 1993 s 35(6).

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240. Notices requiring information about air pollution.

A local authority¹ may by notice in writing require the occupier of any premises² in its area to furnish, whether by periodical returns or by other means, such estimates or other information as may be specified or described in the notice concerning the emission of pollutants and other substances into the air³ from the premises⁴. The person on whom such a notice is served must comply with the notice within six weeks of the date of service, or within such longer period as the local authority may by notice allow⁵. Such a notice must not require returns at intervals of less than three months, and no one notice (whether or not requiring periodical returns) may call for information covering a period of more than 12 months⁶.

A person who: (1) fails without reasonable excuse to comply with the requirements of a notice served on him in pursuance of these provisions⁷; or (2) in furnishing any estimate or other information in compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular⁸, is guilty of an offence and liable to a penalty⁹.

A person served with a notice requiring information about air pollution¹⁰, or any other person having an interest in the premises to which the notice relates, may appeal to the Secretary of State¹¹: (a) on the ground that the giving to the authority or the disclosure to the public of all or part of the information required by the notice would prejudice to an unreasonable degree some private interest by disclosing information about a trade secret or be contrary to the public interest¹²; or (b) on the ground that the information required by the notice is not immediately available and cannot readily be collected or obtained by the recipient of the notice without incurring undue expenditure for the purpose¹³. If the Secretary of State allows the appeal, he may direct the local authority to withdraw or modify the notice, or to take such steps as he may specify to ensure that prejudicial information is not disclosed to the public, and it is the duty of the authority to comply with the direction¹⁴.

The Secretary of State may make regulations¹⁵ as to such appeals¹⁶, including regulations about the time for bringing an appeal and the circumstances in which all or any part of the appellant's case is to be withheld from the respondent¹⁷. It is the duty of the Secretary of State, before he makes any such regulations, to consult such persons appearing to him to represent local authorities, such persons appearing to him to represent industrial interests, and such persons appearing to him to be conversant with problems of air pollution, as he considers appropriate¹⁸.

1 As to the meaning of 'local authority' see PARA 99.

2 The Clean Air Act 1993 s 36 does not apply to premises in so far as they consist of a private dwelling or a caravan: s 36(2). As to the meaning of 'premises' see PARA 210 note 5. As to the meaning of 'private dwelling' see PARA 214 note 19. As to the meaning of 'caravan' see PARA 239 note 12. Except so far as regulations made by the Secretary of State provide otherwise, s 36 applies to premises used for, and to persons in, the public service of the Crown as it applies to other premises and persons: s 36(6). A local authority is not entitled by virtue of s 36(6) to exercise, in relation to premises used for and persons in the public service of the Crown, any power conferred on the authority by virtue of ss 56-58 (see PARAS 243-245): s 36(7). At the date at which this volume states the law no regulations had been made under s 36(6) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Control of Atmospheric Pollution (Exempted Premises) Regulations 1977, SI 1977/18, have effect as if so made. As to the power to make regulations see PARA 207. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the emission of substances into the atmosphere see PARA 239 note 9.

4 Clean Air Act 1993 s 36(1). If the notice relates to a process subject to the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed), the person on whom the notice is served is not obliged to supply any information which, as certified by an inspector appointed under that Part, is not of a kind which is being supplied to the inspector for the purposes of that Part: Clean Air Act 1993 s 36(3). As from a day to be appointed s 36(3) is repealed by the Pollution Prevention and Control Act 1999 Sch 3. At the date at which this volume states the law no such day had been appointed. As to the prospective repeal of the Environmental Protection Act 1990 Pt I see PARA 159 note 2. If the notice relates to an installation subject to regulation by the Environment Agency under regulations made under the Pollution Prevention and Control Act 1999 s 2 (see PARA 186 set seq), the person on whom the notice is served is not obliged to supply any information which, as certified by the Environment Agency, is not of a kind which is being supplied to the Environment Agency for the purposes of those regulations: Clean Air Act 1993 s 36(2A) (added by SI 2000/1973). As to the Environment Agency see PARA 68 et seq.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

5 Clean Air Act 1993 s 36(4).

6 Clean Air Act 1993 s 36(5).

7 Clean Air Act 1993 s 36(8)(a).

8 Clean Air Act 1993 s 36(8)(b).

9 Clean Air Act 1993 s 36(8). The penalty on summary conviction is a fine not exceeding level 5 on the standard scale: s 36(8). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. Where a person is convicted of an offence under s 36(8) in respect of any premises and information of any kind, nothing in s 35(2) (see PARA 239 note 13) prevents a local authority from exercising the power of entry there mentioned for the purpose of obtaining information of that kind in respect of the premises: s 36(9).

10 Ie a notice under the Clean Air Act 1993 s 36: see the text and notes 1-9.

11 Clean Air Act 1993 s 37(1).

12 Clean Air Act 1993 s 37(1)(a).

13 Clean Air Act 1993 s 37(1)(b).

14 Clean Air Act 1993 s 37(2).

15 At the date at which this volume states the law no regulations had been made under the Clean Air Act 1993 s 37(3) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Control of Atmospheric Pollution (Appeals) Regulations 1977, SI 1977/17 (amended by SI 1997/2971) have effect as if so made.

16 Ie appeals under the Clean Air Act 1993 s 37.

17 Clean Air Act 1993 s 37(3).

18 Clean Air Act 1993 s 37(4).

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241. Regulations about local authority functions.

The Secretary of State¹ may by regulations² prescribe the manner in which, and the methods by which, local authorities are to perform their functions relating to the investigation and research into, and the obtaining of information about, air pollution³. It is the duty of the Secretary of State, before he makes such regulations, to consult such persons appearing to him to represent local authorities, such persons appearing to him to represent industrial interests, and such persons appearing to him to be conversant with problems of air pollution, as he considers appropriate⁴.

Such regulations may in particular:

- 309 (1) prescribe the kinds of emissions to which notices requiring information about air pollution⁵ may relate⁶;
- 310 (2) prescribe the kinds of information which may be required by those notices⁷;
- 311 (3) prescribe the manner in which any such notice is to be given, and the evidence which is to be sufficient evidence of its having been given, and of its contents and authenticity⁸;
- 312 (4) require each local authority to maintain in a prescribed form a register containing certain information⁹;
- 313 (5) specify the circumstances in which local authorities may enter into arrangements with owners¹⁰ or occupiers of premises¹¹ under which they will record and measure emissions on behalf of the local authorities¹²; and
- 314 (6) specify the kinds of apparatus which local authorities are to have power to provide and use for measuring and recording emissions, and for other purposes¹³.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 At the date at which this volume states the law no regulations had been made under the Clean Air Act 1993 s 38 but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Control of Pollution (Research and Publicity) Regulations 1977, SI 1977/19, have effect as if so made. As to the power to make regulations see PARA 207.

3 Clean Air Act 1993 s 38(1). The functions referred to in the text are the functions under ss 34(1)(a), (b), 35, 36 (see PARAS 239-240): see s 37(1).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 Clean Air Act 1993 s 38(2).

5 Ie a notice under the Clean Air Act 1993 s 36: see PARA 240.

6 Clean Air Act 1993 s 38(3)(a).

7 Clean Air Act 1993 s 38(3)(b). Regulations made by virtue of s 38(3)(b) may in particular require returns of the total volume of gases, whether pollutant or not, discharged from the premises in question over any period, the concentration of pollutant in the gases discharged, the total of the pollutant discharged over any period, the height or heights at which discharges take place, the hours during which discharges take place or the concentration of pollutants at ground level: s 38(4).

8 Clean Air Act 1993 s 38(3)(c).

9 Clean Air Act 1993 s 38(3)(d). The register must contain: (1) information obtained by the authority by virtue of s 35(1) (see PARA 239), other than information as to which a direction under s 37(2) (see PARA 240) provides that the information is not to be disclosed to the public; and (2) such information (if any) as the Secretary of State may determine, or as may be determined by or under regulations, with respect to any appeal under s 37 against a notice served by the authority which the Secretary of State did not dismiss: s 38(3)(d).

A register maintained by a local authority in pursuance of regulations made by virtue of s 38(3)(d) must be open to public inspection at the principal office of the authority free of charge at all reasonable hours, and the authority must afford members of the public reasonable facilities for obtaining from the authority, on payment of reasonable charges, copies of entries in the register: s 38(5).

10 As to the meaning of 'owner' see PARA 213 note 4.

11 As to the meaning of 'premises' see PARA 210 note 5.

12 Clean Air Act 1993 s 38(3)(e).

13 Clean Air Act 1993 s 38(3)(f).

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242. Provision by local authorities of information for the Secretary of State.

The Secretary of State¹ may, for the purpose of obtaining information about air pollution, direct a local authority² to make such arrangements as may be specified in the direction: (1) for the provision, installation, operation and maintenance by the local authority of apparatus for measuring and recording air pollution³; and (2) for transmitting the information so obtained to the Secretary of State⁴. Before giving such a direction the Secretary of State must consult the local authority⁵. Where apparatus is provided in pursuance of such a direction, the Secretary of State must defray the whole of the capital expenditure incurred by the local authority in providing and installing the apparatus⁶.

It is the duty of the local authority to comply with any direction so given⁷.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'local authority' see PARA 99.

3 Clean Air Act 1993 s 39(1)(a). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 Clean Air Act 1993 s 39(1)(b).

5 Clean Air Act 1993 s 39(1).

6 Clean Air Act 1993 s 39(2).

7 Clean Air Act 1993 s 39(3).

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243. Power of local authorities to obtain information.

A local authority¹ may serve on any person a notice requiring him to furnish to the authority, within a period or at times specified in the notice and in a form so specified, any information so specified which the authority reasonably considers that it needs for the purposes of any function conferred on it².

The Secretary of State³ may by regulations⁴ provide for restricting the information which may be required in pursuance of these provisions⁵ and for determining the form in which the information is to be so required⁶.

Any person who:

315 (1) fails without reasonable excuse to comply with the requirements of a notice served on him⁷; or

316 (2) in furnishing any information in compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular⁸,

is guilty of an offence and liable to a penalty⁹.

1 As to the meaning of 'local authority' see PARA 99.

2 Clean Air Act 1993 s 58(1). The reference in the text is a reference to functions conferred by Pt IV (ss 30-33) or Pt V (ss 34-40), or by Pt VII (ss 47-68) so far as relating to those Parts: see s 58(1).

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

3 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 At the date at which this volume states the law no such regulations had been made.

5 In pursuance of the Clean Air Act 1993 s 58(1): see the text and notes 1-2.

6 Clean Air Act 1993 s 58(2).

7 Clean Air Act 1993 s 58(3)(a). The notice referred to in the text is a notice served under s 58(1) (see the text and notes 1-2): see s 58(3)(a).

8 Clean Air Act 1993 s 58(3)(b).

9 Clean Air Act 1993 s 58(3). The penalty on summary conviction is a fine not exceeding level 5 on the standard scale: s 58(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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(vii) Enforcement and Penalties

244. Enforcement.

A local authority¹ has a duty to enforce certain provisions of the Clean Air Act 1993², but this provision is not to be taken to extend to the enforcement of any building regulations³.

Any person authorised⁴ in that behalf by a local authority may at any reasonable time⁵ enter upon any land or vessel⁶ for the purpose of⁷: (1) performing any function conferred on the authority or that person⁸; (2) determining whether, and if so in what manner, such a function ought to be performed⁹; or (3) determining whether any provision of the Act or of an instrument made under it is being complied with¹⁰. He may also at any reasonable time carry out such inspections, measurements and tests on the land or vessel or of any articles on it and take away such samples of the land or articles as he considers appropriate for such a purpose¹¹.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing:

- 317 (a) that admission to any land or vessel which a person is entitled to enter¹² has been refused to that person or that refusal is apprehended or that the land or vessel is unoccupied or that the occupier is temporarily absent or that the case is one of emergency¹³ or that an application for admission would defeat the object of the entry¹⁴; and
- 318 (b) that there is reasonable ground for entry upon the land or vessel for the purpose for which entry is required¹⁵,

then, subject to certain exceptions¹⁶, the justice may by warrant under his hand authorise that person to enter the land or vessel, if need be by force¹⁷. Such a warrant continues in force until the purpose for which the entry is required has been satisfied¹⁸.

A person who, in the exercise of powers conferred on him¹⁹, enters upon any land or vessel which is unoccupied or of which the occupier is temporarily absent must leave the land or vessel as effectually secured against unauthorised entry as he found it²⁰.

It is the duty of a local authority to make full compensation to any person who has sustained damage by reason of: (i) the exercise by a person authorised by the authority of any of the powers conferred on the person so authorised²¹; or (ii) the failure of a person so authorised to perform the duty imposed on him²², except where the damage is attributable to the default of the person who sustained it²³. Any dispute as to a person's entitlement to compensation in pursuance of this provision or as to the amount of the compensation must be determined by arbitration²⁴.

1 As to the meaning of 'local authority' see PARA 99.

2 Ie (1) the provisions of the Clean Air Act 1993 Pt I (ss 1-3), Pt II (ss 4-16), Pt III (ss 18-29), s 33 (see PARA 237) and Pt VI (ss 41-46); and (2) the provisions of Pt VII (ss 47-68) so far as relating to those provisions: s 55(1).

3 Clean Air Act 1993 s 55(1). As to building regulations see **BUILDING**. A local authority may institute proceedings for an offence under s 1 or s 2 in the case of any smoke which affects any part of its district notwithstanding, in the case of an offence under s 1, that the smoke is emitted from a chimney outside its

district and, in the case of an offence under s 2, that the smoke is emitted from premises outside its district: s 55(2). As to the meaning of 'dark smoke' see PARA 214 note 1. As to the meaning of 'smoke' see PARA 210 note 4. As to the meaning of 'chimney' see PARA 211 note 3. As to the meaning of 'premises' see PARA 210 note 5.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 A person authorised to enter upon any land or vessel in pursuance of the Clean Air Act 1993 s 56 (see the text and notes 5-18) must, if so required, produce evidence of his authority before he enters upon the land or vessel: s 57(1). He may take with him on to the land or vessel in question such other persons and such equipment as may be necessary: s 57(2).

5 Clean Air Act 1993 s 56(1). Section 56(1) does not, except in relation to work under s 24(1) (see PARA 222), apply in relation to a private dwelling: s 56(2). As to the meaning of 'private dwelling' see PARA 214 note 19.

Admission to any land or vessel used for residential purposes and admission with heavy equipment to any other land or vessel must not, except in an emergency (see note 13) or in a case where the land or vessel is unoccupied, be demanded as of right in pursuance of s 56(1) unless notice of the intended entry has been served on the occupier not less than seven days before the demand: s 57(3).

6 As to the meaning of 'vessel' see PARA 210 note 11.

7 Clean Air Act 1993 s 56(1)(a).

8 Clean Air Act 1993 s 56(1)(a)(i).

9 Clean Air Act 1993 s 56(1)(a)(ii).

10 Clean Air Act 1993 s 56(1)(a)(iii).

11 Clean Air Act 1993 s 56(1)(b). The purpose referred to in the text is the purpose in s 56(1)(a) (see the text and notes 7-10): see s 56(1)(b).

12 Ie in pursuance of the Clean Air Act 1993 s 56(1): see the text and notes 5-11.

13 In the Clean Air Act 1993 ss 56, 57, any reference to an emergency is a reference to a case where a person requiring entry to any land or vessel has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry to the land or vessel is necessary to verify the existence of those circumstances or to ascertain their cause or to effect a remedy: s 57(7).

14 Clean Air Act 1993 s 56(3)(a).

15 Clean Air Act 1993 s 56(3)(b).

16 Ie subject to the Clean Air Act 1993 s 56(4). A justice of the peace must not issue a warrant in pursuance of s 56(3) in respect of any land or vessel unless he is satisfied: (1) that admission to the land or vessel in pursuance of s 56(1) was sought after not less than seven days' notice of the intended entry had been served on the occupier; or (2) that admission to the land or vessel in pursuance of s 56(1) was sought in an emergency and was refused by or on behalf of the occupier; or (3) that the land or vessel is unoccupied; or (4) that an application for admission to the land or vessel would defeat the object of the entry: s 56(4).

17 Clean Air Act 1993 s 56(3).

18 Clean Air Act 1993 s 56(5).

19 Ie by virtue of the Clean Air Act 1993 s 56 or s 57.

20 Clean Air Act 1993 s 57(4).

21 Clean Air Act 1993 s 57(5)(a). The reference in the text to authorisation is a reference to authorisation by virtue of s 56 or s 57: see s 57(5)(a).

22 Clean Air Act 1993 s 57(5)(b). The duty referred to in the text is a duty imposed by s 57(4) (see the text and note 20): see s 57(5)(b).

23 Clean Air Act 1993 s 57(5).

24 Clean Air Act 1993 s 57(5). As to arbitration see the Arbitration Act 1996; and **ARBITRATION** vol 2 (2008) PARA 1201 et seq.

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245. Penalty for obstruction.

Any person who wilfully obstructs another person acting in the exercise of any powers of entry and inspection conferred on the other person under the Clean Air Act 1993¹ is guilty of an offence and liable to a penalty².

¹ Ie by virtue of the Clean Air Act 1993 s 56 or s 57: see PARA 244.

² Clean Air Act 1993 s 57(6). The penalty on summary conviction is a fine not exceeding level 3 on the standard scale: s 57(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

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246. Cumulative penalties on continuance of certain offences.

Where (1) a person is convicted of an offence which is subject to cumulative penalties on continuance¹; and (2) it is shown to the satisfaction of the court that the offence was substantially a repetition or continuation of an earlier offence by him after he had been convicted of the earlier offence², a specified penalty³ applies instead of the penalty otherwise specified for the offence⁴. Where an offence is subject to such cumulative penalties the court by which a person is convicted of the original offence may fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court⁵. Where a court has fixed such a period, a daily penalty⁶ is not recoverable in respect of any day before the end of that period⁷.

1 Clean Air Act 1993 s 50(1)(a). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

2 Clean Air Act 1993 s 50(1)(b).

3 The person convicted is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or £50 for every day on which the earlier offence has been so repeated or continued by him within the three months next following his conviction of that offence, whichever is the greater: Clean Air Act 1993 s 50(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the meaning of 'day' see PARA 214 note 4.

4 Clean Air Act 1993 s 50(1).

5 Clean Air Act 1993 s 50(3)(a).

6 Ie the daily penalty referred to in the Clean Air Act 1993 s 50(2): see note 3.

7 Clean Air Act 1993 s 50(3)(b).

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247. Offences committed by bodies corporate.

Where an offence under the Clean Air Act 1993 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly¹. Where the affairs of a body corporate are managed by its members this provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate².

1 Clean Air Act 1993 s 52(1). As to corporate liability generally see **COMPANIES** vol 14 (2009) PARA 311 et seq; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 38.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

2 Clean Air Act 1993 s 52(2).

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248. Offence due to act or default of another.

Where the commission by any person of an offence under the Clean Air Act 1993 is due to the act or default of some other person, that other person is guilty of the offence¹. A person may be charged with and convicted of an offence by virtue of these provisions whether or not proceedings for the offence are taken against any other person².

1 Clean Air Act 1993 s 53(1). As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

2 Clean Air Act 1993 s 53(2).

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249. Duty to notify occupier of offence.

If, in the opinion of an authorised officer¹ of a local authority, an offence of emitting smoke² is being or has been committed, he must, unless he has reason to believe that notice of it has already been given by or on behalf of the local authority, as soon as may be notify the appropriate person³; and, if his notification is not in writing, he must before the end of the four days⁴ next following the day on which he became aware of the offence confirm the notification in writing⁵.

1 'Authorised officer' means any officer of a local authority authorised by it in writing, either generally or specially, to act in matters of any specified kind or in any specified matter: Clean Air Act 1993 s 64(1). As to the meaning of 'local authority' see PARA 99.

2 Ie an offence under the Clean Air Act 1993 s 1 (see PARA 214), s 2 (see PARA 215), or s 20 (see PARA 217).

3 For these purposes, the appropriate person to notify is the occupier of the premises, the person having possession of the boiler or plant, the owner of the railway locomotive engine, or the owner or master or other officer or person in charge of the vessel concerned, as the case may be: Clean Air Act 1993 s 51(2). As to the meaning of 'premises' see PARA 210 note 5. As to the meaning of 'owner' see PARA 213 note 4. As to the meaning of 'vessel' see PARA 210 note 11.

As to the Health Act 2006 Pt 1 Ch 1 (ss 1-12), which makes provision for enclosed and substantially enclosed public places and shared workplaces to be smoke-free, see PARA 250 et seq.

4 As to the meaning of 'day' see PARA 214 note 4.

5 Clean Air Act 1993 s 51(1) (amended by the Environment Act 1995 Sch 24). In any proceedings for an offence under the Clean Air Act 1993 s 1 (see PARA 214), s 2 (see PARA 215) or s 20 (see PARA 217), it is a defence to prove that the provisions of s 51(1) have not been complied with in the case of the offence; and if no such notification as is required by s 51(1) has been given before the end of the four days next following the day of the offence, then s 51(1) is taken not to have been complied with unless the contrary is proved: s 51(3).

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(5) SMOKE-FREE PREMISES, PLACES AND VEHICLES

250. Introduction.

Chapter 1 of Part 1 of the Health Act 2006¹ makes provision for the prohibition of smoking² in certain premises³, places and vehicles⁴ which are smoke-free by virtue of that chapter⁵.

Chapter 1 of Part 1 of the Health Act 2006 (1) has effect in relation to the territorial sea adjacent to England as it has effect in relation to England; and (2) has effect in relation to the territorial sea adjacent to Wales as it has effect in relation to Wales⁶.

1 In the Health Act 2006 ss 1-12.

2 In the Health Act 2006 Pt 1 Ch 1 (1) 'smoking' refers to smoking tobacco or anything which contains tobacco, or smoking any other substance; and (2) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked: s 1(2). In Pt 1 Ch 1, 'smoke' and other related expressions are to be read in accordance with s 1(2): s 1(3).

3 In the Health Act 2006 Pt 1 Ch 1 'premises' includes a tent, and (if not a ship within the meaning of the Merchant Shipping Act 1995) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229) a moveable structure and an offshore installation (as defined in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1684): Health Act 2006 s 12(1). The appropriate national authority may by order provide for the definition of 'premises' in s 12(1) to be read as if a reference to another enactment were substituted for the reference to the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3: Health Act 2006 Act s 12(2). In the Health Act 2006 'appropriate national authority' means (1) in relation to England, the Secretary of State (see PARA 58); and (2) in relation to Wales, the Welsh Ministers (see PARA 59): s 82(1).

4 In the Health Act 2006 Pt 1 Ch 1 (ss 1-12), 'vehicle' means every type of vehicle, including train, vessel, aircraft and hovercraft: ss 5(5), 12(1).

5 Health Act 2006 s 1(1). As to smoke-free premises see PARA 251.

6 Health Act 2006 s 12(3). See further s 12(4) (amended by SI 2007/1388).

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251. Smoke-free premises.

Premises¹ are smoke-free² if they are open to the public³. However unless the premises also fall within the provision below⁴, they are smoke-free only when open to the public⁵. Premises are smoke-free if they are used as a place of work⁶ (1) by more than one person (even if the persons who work there do so at different times, or only intermittently); or (2) where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present)⁷. They are smoke-free all the time⁸. If only part of the premises is open to the public or (as the case may be) used as a place of work⁹, the premises are smoke-free only to that extent¹⁰. In any case, premises are smoke-free only in those areas which are enclosed or substantially enclosed¹¹.

Provision is made¹² for some premises, or areas of premises, not to be smoke-free despite the above provisions¹³.

The appropriate national authority may make regulations providing for specified descriptions of premises, or specified areas within specified descriptions of premises, not to be smoke-free¹⁴. Descriptions of premises which may be specified¹⁵ include, in particular, any premises where a person has his home, or is living whether permanently or temporarily (including hotels, care homes, and prisons and other places where a person may be detained)¹⁶. The power to make regulations¹⁷ is not exercisable so as to specify any description of (a) premises in respect of which a premises licence under the Licensing Act 2003 authorising the sale by retail of alcohol for consumption on the premises has effect; (b) premises in respect of which a club premises certificate¹⁸ has effect¹⁹. For the purpose of making provision for those participating as performers in a performance²⁰, or in a performance of a specified description, not to be prevented from smoking if the artistic integrity of the performance makes it appropriate for them to smoke (i) the above power²¹ also includes power to provide for specified descriptions of premises or specified areas within such premises not to be smoke-free in relation only to such performers; and (ii) the above provision²² does not prevent the exercise of that power as so extended²³. The regulations may provide, in relation to any description of premises or areas of premises specified in the regulations, that the premises or areas are not smoke-free (A) in specified circumstances; (B) if specified conditions are satisfied; or (C) at specified times, or any combination of those²⁴. The conditions may include conditions requiring the designation in accordance with the regulations, by the person in charge of the premises, of any rooms in which smoking is to be permitted²⁵.

1 As to the meaning of 'premises' see PARA 250 note 3.

2 As to the meaning of 'smoke' see PARA 250 note 2.

3 Health Act 2006 s 2(1). Premises are 'open to the public' if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not: s 2(7).

4 Ie within the Health Act 2006 s 2(2).

5 Health Act 2006 s 2(1).

6 'Work', in the Health Act 2006 s 2(2), includes voluntary work: s 2(8).

7 Health Act 2006 s 2(2).

8 Health Act 2006 s 2(2).

9 Ie mentioned in the Health Act 2006 s 2(2).

10 Health Act 2006 s 2(3).

11 Health Act 2006 s 2(4). The appropriate national authority may specify in regulations what 'enclosed' and 'substantially enclosed' mean: s 2(5). See the Smoke-free (Premises and Enforcement) Regulations 2006, SI 2006/3368; and the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787. As to the meaning of 'appropriate national authority' see PARA 250 note 3. 'Specified', in relation to regulations, means specified in the regulations: Health Act 2006 s 12(1). As to regulations under the Health Act 2006 generally see s 79.

12 Ie by the Health Act 2006 s 3: see the text and notes 13-25.

13 Ie despite the Health Act 2006 s 2: s 2(6).

14 Health Act 2006 s 3(1). This applies despite s 2: s 3(1). See the Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765; and the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787.

15 Ie under the Health Act 2006 s 3(1).

16 Health Act 2006 s 3(2). See *R (on the application of N) v Secretary of State for Health; R (on the application of E) v Nottinghamshire Healthcare NHS Trust (Equality and Human Rights Commission intervening)* [2009] EWCA Civ 795, [2009] All ER (D) 264 (Jul) (temporal limit on exemption for mental health units did not constitute interference with patients' private life or discrimination).

17 Ie under the Health Act 2006 s 3(1).

18 Ie within the meaning of the Licensing Act 2003 s 60: see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85.

19 Health Act 2006 s 3(3). Section 3(3) does not prevent the exercise of that power so as to specify any area, within a specified description of premises mentioned in s 3(3), where a person has his home, or is living whether permanently or temporarily: s 3(4).

20 For the purposes of the Health Act 2006 s 3(5), the references to a performance (1) include, for example, the performance of a play, or a performance given in connection with the making of a film or television programme; and (2) if the regulations so provide, include a rehearsal: s 3(8).

21 Ie the power in the Health Act 2006 s 3(1).

22 Ie the Health Act 2006 s 3(3).

23 Health Act 2006 s 3(5).

24 Health Act 2006 s 3(6).

25 Health Act 2006 s 3(7).

UPDATE

251 Smoke-free premises

NOTE 16--*R (on the application of N); R (on the application of E)*, cited, reported at [2010] PTSR 674.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/5. AIR QUALITY AND AIR POLLUTION/(5) SMOKE-FREE PREMISES, PLACES AND VEHICLES/252. Additional smoke-free places.

252. Additional smoke-free places.

The appropriate national authority¹ may make regulations designating as smoke-free² any place or description of place that is not smoke-free³. The place, or places falling within the description, need not be enclosed or substantially enclosed⁴. The appropriate national authority may designate a place or description of place under these provisions only if in the authority's opinion there is a significant risk that, without a designation, persons present there would be exposed to significant quantities of smoke⁵. The regulations may provide for such places, or places falling within the description, to be smoke-free only (1) in specified⁶ circumstances; (2) at specified times; (3) if specified conditions are satisfied; (4) in specified areas, or any combination of those⁷.

1 As to the meaning of 'appropriate national authority' see PARA 250 note 3.

2 As to the meaning of 'smoke' see PARA 250 note 2.

3 Health Act 2006 s 4(1). The reference is to such a place that is not smoke-free under s 2 (see PARA 251). As to regulations under the Health Act 2006 generally see s 79. At the date at which this volume states the law no such regulations had been made.

4 Health Act 2006 s 4(2).

5 Health Act 2006 s 4(3).

6 As to the meaning of 'specified' see PARA 251 note 11.

7 Health Act 2006 s 4(4).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/5. AIR QUALITY AND AIR POLLUTION/(5) SMOKE-FREE PREMISES, PLACES AND VEHICLES/253. Vehicles.

253. Vehicles.

The appropriate national authority¹ may make regulations providing for vehicles² to be smoke-free³. The regulations may in particular make provision (1) for the descriptions of vehicle which are to be smoke-free; (2) for the circumstances in which they are to be smoke-free; (3) for them to be smoke-free only in specified⁴ areas, or except in specified areas; (4) for exemptions⁵. The power to make regulations is not exercisable in relation to (a) any ship or hovercraft in relation to which regulations could be made⁶; or (b) persons on any such ship or hovercraft⁷.

1 As to the meaning of 'appropriate national authority' see PARA 250 note 3.

2 As to the meaning of 'vehicle' see PARA 250 note 4.

3 Health Act 2006 s 5(1). As to the meaning of 'smoke' see PARA 250 note 2. See the Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765; and the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787. As to regulations under the 2006 Act generally see s 79.

4 As to the meaning of 'specified' see PARA 251 note 11.

5 Health Act 2006 s 5(2). See the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787; and note 3.

6 Ie under the Merchant Shipping Act 1995 s 85 (safety and health on ships) (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 591 et seq), including s 85 as applied by any Order in Council under the Hovercraft Act 1968 s 1(1)(h).

7 Health Act 2006 s 5(3).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/5. AIR QUALITY AND AIR POLLUTION/(5) SMOKE-FREE PREMISES, PLACES AND VEHICLES/254. No-smoking signs.

254. No-smoking signs.

It is the duty of any person who occupies or is concerned in the management of smoke-free premises¹ to make sure that no-smoking signs complying with the requirements of these provisions² are displayed in those premises in accordance with the requirements of these provisions³. Regulations made by the appropriate national authority⁴ may provide for a duty corresponding to that mentioned above⁵ in relation to (1) places which are smoke-free⁶; (2) vehicles⁷ which are smoke-free⁸. The duty is to be imposed on persons, or on persons of a description, specified⁹ in the regulations¹⁰. The signs must be displayed in accordance with any requirements contained in regulations made by the appropriate national authority¹¹. The signs must conform to any requirements specified in regulations made by the appropriate national authority (for example, requirements as to content, size, design, colour, or wording)¹². A person who fails to comply with the duty mentioned above¹³, or any corresponding duty in regulations¹⁴, commits an offence¹⁵.

1 As to the meanings of 'smoke' and 'premises' see PARA 250 notes 2, 3. As to smoke-free premises see PARA 251. The references in the Health Act 2006 s 6, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of Pt 1 Ch 1 (ss 1-12) (and references to smoke-free premises include premises which by virtue of regulations under s 3(5) (see PARA 251) are smoke-free except in relation to performers): s 6(9).

2 Ie the Health Act 2006 s 6.

3 Health Act 2006 s 6(1).

4 As to the meaning of 'appropriate national authority' see PARA 250 note 3.

5 Ie mentioned in the Health Act 2006 s 6(1).

6 Ie by virtue of the Health Act 2006 s 4: see PARA 252.

7 As to the meaning of 'vehicle' see PARA 250 note 4.

8 Health Act 2006 s 6(2). The reference is to vehicles which are smoke-free by virtue of s 5 (see PARA 253). See the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787. As to regulations under the Health Act 2006 generally see s 79.

9 As to the meaning of 'specified' see PARA 251 note 11.

10 Health Act 2006 s 6(2).

11 Health Act 2006 s 6(3). In relation to England, see the Smoke-free (Signs) Regulations 2007, SI 2007/923.

12 Health Act 2006 s 6(4). In relation to England, see the Smoke-free (Signs) Regulations 2007, SI 2007/923.

13 Ie in the Health Act 2006 s 6(1).

14 Ie under the Health Act 2006 s 6(2).

15 Health Act 2006 s 6(5). It is a defence for a person charged with an offence under s 6(5) to show (1) that he did not know, and could not reasonably have been expected to know, that the premises were smoke-free (or, as the case may be, that the place or vehicle was smoke-free); or (2) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the requirements of s 6 were not being displayed in accordance with the requirements of s 6; or (3) that on other grounds it was reasonable

for him not to comply with the duty: s 6(6). If a person charged with an offence under s 6(5) relies on a defence in s 6(6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 6(7). A person guilty of an offence under s 6(5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 6(8); Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

As to offences committed by bodies corporate, partnerships and other unincorporated associations, see the Health Act 2006 ss 76, 77.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/5. AIR QUALITY AND AIR POLLUTION/(5) SMOKE-FREE PREMISES, PLACES AND VEHICLES/255. Offences.

255. Offences.

A person who smokes in a smoke-free place¹ commits an offence². A person guilty of an offence under these provisions is liable on summary conviction to a fine³.

It is the duty of any person who controls or is concerned in the management of smoke-free⁴ premises to cause a person smoking⁵ there to stop smoking⁶. Regulations made by the appropriate national authority⁷ may provide for a duty corresponding to that mentioned above⁸ in relation to (1) places which are smoke-free⁹; (2) vehicles which are smoke-free¹⁰. The duty is to be imposed on persons, or on persons of a description, specified¹¹ in the regulations¹². A person who fails to comply with the above duty¹³, or any corresponding duty in regulations¹⁴, commits an offence¹⁵. A person guilty of an offence under these provisions is liable on summary conviction to a fine¹⁶.

1 In the Health Act 2006 s 7, a 'smoke-free place' means any of the following (1) premises, so far as they are smoke-free under or by virtue of s 2 (see PARA 251) and s 3 (see PARA 251) (including premises which by virtue of regulations under s 3(5) are smoke-free except in relation to performers); (2) a place, so far as it is smoke-free by virtue of s 4 (see PARA 252); (3) a vehicle, so far as it is smoke-free by virtue of s 5 (see PARA 253): s 7(1). As to the meaning of 'premises' see PARA 250 note 3; and as to the meaning of 'vehicle' see PARA 250 note 4. A person who smokes in premises which are not smoke-free in relation to performers by virtue of regulations under s 3(5) does not commit an offence if he is such a performer: s 7(3).

2 Health Act 2006 s 7(2). It is a defence for a person charged with an offence under s 7(2) to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place: s 7(4). If a person charged with an offence under s 7 relies on a defence in s 7(4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 7(5).

3 Health Act 2006 s 7(6); Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(2). The fine is a fine not exceeding level 1 on the standard scale. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to regulations under the Health Act 2006 generally see s 79.

As to offences committed by bodies corporate, partnerships and other unincorporated associations, see ss 76, 77.

4 As to the meaning of 'smoke' see PARA 250 note 2. As to smoke-free premises see PARA 251.

5 As to the meaning of 'smoking' see PARA 250 note 2.

6 Health Act 2006 s 8(1). The reference in s 8(1) to a person smoking does not include a performer in relation to whom the premises are not smoke-free by virtue of regulations under s 3(5) (see PARA 251): s 8(2). The references in s 8, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of Pt 1 Ch 1 (ss 1-12) (and references to smoke-free premises include premises which by virtue of regulations under s 3(5) are smoke-free except in relation to performers): s 8(8).

7 As to the meaning of 'appropriate national authority' see PARA 250 note 3.

8 Ie in the Health Act 2006 s 8(1).

9 Ie by virtue of the Health Act 2006 s 4: see PARA 252.

10 Health Act 2006 s 8(3). The reference is to vehicles which are smoke-free by virtue of s 5 (see PARA 253). See the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007, SI 2007/760; and the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787. As to regulations under the Health Act 2006 generally see s 79.

11 As to the meaning of 'specified' see PARA 251 note 11.

12 Health Act 2006 s 8(3). See note 10.

13 Ie the duty in the Health Act 2006 s 8(1).

14 Ie under the Health Act 2006 s 8(3).

15 Health Act 2006 s 8(4). It is a defence for a person charged with an offence under s 8(4) to show (1) that he took reasonable steps to cause the person in question to stop smoking; or (2) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking; or (3) that on other grounds it was reasonable for him not to comply with the duty: s 8(5). If a person charged with an offence under s 8 relies on a defence in s 8(5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 8(6). See *R (on the application of Howitt) v Preston Magistrates' Court* [2009] EWHC 1284 (Admin), [2009] LLR 538.

16 Health Act 2006 s 8(7); Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(3). The fine is a fine not exceeding level 4 on the standard scale.

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256. Fixed penalties.

An authorised officer¹ of an enforcement authority² who has reason to believe that a person has committed an offence³ on premises⁴, or in a place or vehicle⁵, in relation to which the authorised officer has functions may give him a penalty notice in respect of the offence⁶. A penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with Chapter 1 of Part 1 of the Health Act 2006⁷.

Further provision about fixed penalties is made⁸.

1 In the Health Act 2006 Pt 1 Ch 1 (ss 1-12), 'authorised officer', in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by it in writing, either generally or specially, to act in matters arising under Pt 1 Ch 1: ss 10(5), 12(1).

2 See the Health Act 2006 s 10; and PARA 257.

3 In the Health Act 2006 s 6(5) (see PARA 254) or 7(2) (see PARA 255).

4 As to the meaning of 'premises' see PARA 250 note 3.

5 As to the meaning of 'vehicle' see PARA 250 note 4.

6 Health Act 2006 s 9(1).

7 Health Act 2006 s 9(2).

8 See the Health Act 2006 s 9(3), Sch 1. As to regulations made under Sch 1 see the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007, SI 2007/760; the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787; and the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/5. AIR QUALITY AND AIR POLLUTION/(5) SMOKE-FREE PREMISES, PLACES AND VEHICLES/257. Enforcement.

257. Enforcement.

The appropriate national authority¹ may make regulations designating the bodies or descriptions of body which are to be enforcement authorities for the purposes of Chapter 1 of Part 1 of the Health Act 2006². The regulations (1) must specify³ the descriptions of premises⁴, place or vehicle⁵ in relation to which an enforcement authority has enforcement functions; (2) may provide for a case being dealt with by one enforcement authority to be transferred (or further transferred, or transferred back) to, and taken over by, another enforcement authority⁶. It is the duty of an enforcement authority to enforce, as respects the premises, places and vehicles in relation to which it has enforcement functions, the provisions of Chapter 1 of Part 1 of the Health Act 2006 and regulations made under it⁷. If regulations under these provisions so provide, no person is to be so authorised unless he has such qualifications as are prescribed by the regulations⁸.

Provision is made about powers of entry, etc⁹.

1 As to the meaning of 'appropriate national authority' see PARA 250 note 3.

2 Health Act 2006 s 10(1). The reference is to Pt 1 (ss 1-12). See the Smoke-free (Premises and Enforcement) Regulations 2006, SI 2006/3368; and the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787. As to regulations under the Health Act 2006 generally see s 79.

3 As to the meaning of 'specified' see PARA 251 note 11.

4 As to the meaning of 'premises' see PARA 250 note 3.

5 As to the meaning of 'vehicle' see PARA 250 note 4.

6 Health Act 2006 s 10(2). See note 2.

7 Health Act 2006 s 10(3). The appropriate national authority may direct, in relation to cases of a particular description or a particular case, that any duty imposed on an enforcement authority by s 10(3) is to be discharged instead by the appropriate national authority: s 10(4).

8 Health Act 2006 s 10(6).

9 See the Health Act 2006 s 10(7), Sch 2.

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258. Obstruction etc of officers.

Any person who intentionally obstructs an authorised officer¹ of an enforcement authority, acting in the exercise of his functions under or by virtue of Chapter 1 of Part 1 of the Health Act 2006², commits an offence³. Any person who without reasonable cause fails to give to an authorised officer of an enforcement authority, acting in the exercise of his functions under or by virtue of Chapter 1 of Part 1 of the Health Act 2006, any facilities, assistance or information which the authorised officer reasonably requires of him for the performance of those functions commits an offence⁴. A person commits an offence if, in purported compliance with any requirement of an authorised officer⁵ (1) he makes a statement which is false or misleading⁶; and (2) he either knows that it is false or misleading or is reckless as to whether it is false or misleading⁷. A person guilty of an offence under the above provisions is liable on summary conviction to a fine⁸.

If a direction of the appropriate national authority⁹ has effect¹⁰ the above provisions have effect, in relation to any case or case of a description specified¹¹ in the direction, as if references to an authorised officer of an enforcement authority were to a person acting on behalf of the appropriate national authority¹².

1 As to the meaning of 'authorised officer' see PARA 256 note 1.

2 Ie the Health Act 2006 ss 1-12.

3 Health Act 2006 s 11(1).

4 Health Act 2006 s 11(2).

5 Ie mentioned in the Health Act 2006 s 11(2).

6 'False or misleading' means false or misleading in a material particular: Health Act 2006 s 11(3).

7 Health Act 2006 s 11(3).

8 Health Act 2006 s 11(4). The fine is a fine not exceeding level 3 on the standard scale. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

As to offences committed by bodies corporate, partnerships and other unincorporated associations see ss 76, 77.

9 As to the meaning of 'appropriate national authority' see PARA 250 note 3.

10 Ie under the Health Act 2006 s 10(4): see PARA 257.

11 As to the meaning of 'specified' see PARA 251 note 11.

12 Health Act 2006 s 11(5).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/6. CLIMATE CHANGE/(1) IN GENERAL/259. Introduction.

6. CLIMATE CHANGE

(1) IN GENERAL

259. Introduction.

In recent years, the problem of climate change has become a major issue for environmental law and policy in the United Kingdom¹. Although the impact of air pollution remains subject to legal controls under pollution control and clean air legislation both at European Union and local level², an increasing overriding environmental challenge is that of reducing emissions of carbon dioxide and other 'greenhouse gases' to stabilise or reduce climate change. Although this development and the resulting legislative controls are considered elsewhere in this work³, it is thought appropriate in this title at least to make reference to this new emerging area of environmental law, alongside the more traditional areas.

Amongst measures originally in the United Kingdom's first Climate Change Programme are the use of two economic instruments, namely the climate change levy established by the Finance Act 2000⁴, and the greenhouse gas emissions trading scheme established under the Greenhouse Gas Emissions Trading Scheme Regulations 2005⁵. More recently the Finance Acts 2007 and 2008 have empowered the Treasury⁶ to impose charges by providing for, respectively, Community tradeable emissions allowances and carbon reduction trading scheme allowances to be allocated in return for payment⁷.

The Climate Change and Sustainable Energy Act 2006 and the Climate Change Act 2008 are both illustrative of the ongoing 'reorientation' of environmental law, although they must be seen in the context of relevant global and EU obligations on climate change⁸. The Climate Change and Sustainable Energy Act 2006, introduced as a private member's bill and the provisions of which are discussed elsewhere⁹, had as its principal purpose the enhancement of the United Kingdom's contribution to combating climate change. It also aims at alleviating fuel poverty and securing diverse and long-term energy supplies for the United Kingdom and focuses on boosting microgeneration and energy efficiency. The government is required to report to Parliament annually on greenhouse gas emissions and explain what is being done to curb them¹⁰ and is required to set targets for the number of microgeneration systems installed throughout England, Wales and Scotland¹¹. This main purpose does not have a substantive effect in its own right, but rather requires the provisions of the Act to be read in light of it. There are provisions for energy companies to pay a fair price for electricity from microgeneration¹². A 'carbon emissions reduction obligation' allows energy suppliers to use emissions reductions from microgeneration and other 'low emission sources or technologies' to meet their targets¹³. The Act also strengthens enforcement procedures for building regulations¹⁴, requires local authorities to take more action to improve energy efficiency¹⁵ and has measures intended to encourage community energy and renewable heating¹⁶.

The Climate Change Act 2008 is for the most part covered elsewhere¹⁷. It was passed following a public consultation exercise and sets up a framework for the United Kingdom to achieve its long-term goals of reducing greenhouse gas emissions and to ensure steps are taken towards adapting to the impact of climate change. Its main elements are: (1) setting emissions reduction targets in statute and carbon budgeting¹⁸; (2) the creation of an independent advisory body¹⁹; (3) trading scheme powers²⁰; (4) impact and adaptation to climate change²¹; and (5) various measures which reduce emissions²².

1 As to the meaning of 'United Kingdom' see PARA 1 note 2. As to United Kingdom national policy statements on climate change see the Department of Energy and Climate Change website which was, at the date at which this volume states the law, www.decc.gov.uk.

As to the international context of climate change and agreements and conventions led by the Climate Change Convention (ie United Nations Framework Convention on Climate Change (UNFCCC) (Rio de Janeiro, 5 June 1992; Misc 5 (1993); Cm 2137)) and the Kyoto Protocol (ie Kyoto Protocol to the UNFCCC (Kyoto, 11 December 1997; TS 006 (2005) Cm 6485)) see generally PARA 4; and also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 654. As to European Union climate change legislation generally see the EUR-Lex website which was, at the date at which this volume states the law, www.eur-lex.europa.eu.

2 As to integration of pollution control see PARA 158 et seq; and as to air quality and air pollution see PARA 190 et seq.

3 See **FUEL AND ENERGY**.

4 See the Finance Act 2000 s 30, Schs 6, 7; and **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 661 et seq. See the Climate Change Levy (General) Regulations 2001, SI 2001/838 (amended by SI 2010/643); and **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARAS 661, 666 et seq. See also the Climate Change Levy (Solid Fuel) (Revocation) Regulations 2009, SI 2009/3338, which revokes the Climate Change Levy (Solid Fuel) Regulations 2001, SI 2001/1137, and from 1 January 2010 makes supplies of solid fuel valued at no more than £15 per tonne subject to the climate change levy.

5 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925; and PARA 260.

6 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

7 See PARA 261.

8 See PARA 9 et seq. See also note 1.

9 See **FUEL AND ENERGY**.

10 See the Climate Change and Sustainable Energy Act 2006 s 2; and **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 615.

11 See the Climate Change and Sustainable Energy Act 2006 ss 4-8; and **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 619.

12 See the Climate Change and Sustainable Energy Act 2006 s 7; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1077.

13 See the Climate Change and Sustainable Energy Act 2006 ss 15, 16; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 895.

14 See the Climate Change and Sustainable Energy Act 2006 ss 13, 14; and **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 657.

15 See the Climate Change and Sustainable Energy Act 2006 s 3; and **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 616.

16 See the Climate Change and Sustainable Energy Act 2006 ss 19-21; and **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARAS 621, 622, 629.

17 See **FUEL AND ENERGY**.

18 See PARA 262.

19 See PARA 263.

20 See PARA 264 et seq.

21 See PARA 268.

22 See PARA 269.

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260. Greenhouse gas emissions.

Provisions relating to climate change generally and greenhouse gas emissions are mainly dealt with elsewhere in this work¹. In addition to any United Kingdom² greenhouse gas emissions trading schemes³, provision is made for giving effect in the United Kingdom to European Union legislation establishing a scheme for greenhouse gas emission allowance trading within the European Union⁴.

No person may carry out a specified activity⁵ resulting in specified emissions⁶ except under and to the extent authorised by a greenhouse gas emissions permit⁷. Provision is made in relation to:

- 319 (1) applications for greenhouse gas emissions permits, including the required information relating to the applicant, the installation in respect of which the permit is sought, the activity intended to be carried out at that installation, the specified emissions, and the planned arrangements for monitoring and reporting⁸;
- 320 (2) the determination of applications and grant of permits by the regulator (the Environment Agency)⁹, including the grounds for refusing an application, the information to be included in a permit, the grant of a permit in respect of more than one installation on the same site, and the consolidation of permits in respect of installations operated by the same operator on a single site¹⁰;
- 321 (3) the inclusion of conditions in a permit, including conditions relating to monitoring and reporting, annual reportable emissions and the surrender of allowances, and the review of conditions¹¹;
- 322 (4) excluded installations, including the making of an application for a certificate that an installation is an excluded installation, conditions attached to exclusions, revocation of certificates, and the effect of partial transfer of a permit in relation to an excluded installation¹²;
- 323 (5) proposed change in operation¹³;
- 324 (6) commencement of relevant activities¹⁴;
- 325 (7) variation of the provisions of a permit¹⁵;
- 326 (8) transfer of permits (including partial transfer)¹⁶;
- 327 (9) surrender of permits¹⁷; and
- 328 (10) revocation of permits¹⁸.

A fee is payable in respect of an application for a permit, for the variation of conditions, for the transfer of a permit, or for the surrender of a permit¹⁹.

The Secretary of State must develop a national allocation plan, in respect of the second and subsequent phases for the allocation of allowances of greenhouse gas emissions²⁰. For each phase the Secretary of State must decide on the allocation and issue of allowances²¹. A registry of allowances must be established and maintained²². In certain circumstances one or more operators may make a joint application to form a pool for the first or second phase²³.

While a greenhouse gas emissions permit is in force it is the duty of the regulator to take such action as may be necessary for the purpose of ensuring that the monitoring and reporting conditions are complied with²⁴. In that regard the regulator may issue (and withdraw) enforcement notices²⁵, may determine the reportable emissions of an installation²⁶, and has powers of entry in relation to offshore installations²⁷.

Specific provision is made regarding the provision and publication of information to and by the specified public authorities²⁸, non-disclosure of information in the interests of national security²⁹, offences³⁰ and civil penalties³¹, and guidance and directions issued by the Secretary of State to the regulator and registry administrators³².

1 See eg the Climate Change and Sustainable Energy Act 2006; the Climate Change Act 2008; and **FUEL AND ENERGY**. See also PARA 259.

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 See eg the UK Greenhouse Gas Emissions Trading Scheme 2002 (voluntary in nature and of limited duration, expiring in 2007) made on behalf of the Secretary of State; and the Waste and Emissions Trading Act 2003 s 39(3). If incorporated in a participation agreement, the penalty provisions of the scheme (as amended from time to time) have statutory effect between the parties to the agreement: s 39(1). Section 39(1) applies in relation to agreements entered into before, as well as in relation to agreements entered into after, the commencement of s 39: s 39(2). A 'participation agreement' is an agreement that has the effect that a person is a participant in the UK Greenhouse Gas Emissions Trading Scheme 2002; and 'penalty provisions' means provisions for penalties for non-compliance with the scheme: s 39(3). As to the general provisions on emission limits and quality objectives see the Environmental Protection Act 1990 s 3 (prospectively repealed); and PARA 160. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. See also PARA 261.

4 See European Parliament and EC Council Directive 2003/87 (OJ L275, 25.10.2003, p 32) establishing a scheme for greenhouse gas emission allowance trading within the European Community (amended by European Parliament and EC Council Directive 2004/101 (OJ L338, 13.11.2004, p 18); European Parliament and EC Council Directive 2008/101 (OJ L8, 13.1.2009, p 3); and European Parliament and EC Council Directive 2009/29 (OJ L140, 5.6.2009, p 63)); EC Commission Regulation 2216/2004 (OJ L386, 29.12.2004, p 1) for a standardised and secured system of registries pursuant to Directive 2003/87 and Decision 280/2004 (amended by EC Commission Regulation 916/2007 (OJ L200, 1.8.2007, p 5); and EC Commission Regulation 994/2008 (OJ L271, 11.10.2008, p 3)); EC Commission Decision 2007/589 (OJ L229, 31.8.2007, p 1) establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87; and PARA 15. As to Directive 2003/87 see Case T-183/07: *Republic of Poland v European Commission (Republic of Hungary intervening)* [2009] All ER (D) 53 (Nov), CFI. As to provisions about charges that may be imposed for carbon emissions by the allocation of Community tradeable emissions allowances and carbon reduction trading scheme allowances in return for payment: see the Finance Act 2007 s 17; the Finance Act 2008 s 21; and PARA 261. As to provisions made by the Climate Change Act 2008 with regard to trading schemes see PARA 264 et seq. Note that Regulation 2216/2004 (see above) is replaced as from 1 January 2012 by EC Commission Regulation 994/2008 (OJ L271, 11.10. 2008, p 3) for a standardised system of registries pursuant to Directive 2003/87 and Decision 280/2004.

For the purposes of implementation in the United Kingdom of Directive 2003/87 (see above) the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, were made. As to the application of the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, to the Crown see reg 3. As to the service of notices and other documents required to be served or given under the regulations see reg 4. As to the form of applications see reg 5.

See also the Fluorinated Greenhouse Gases Regulations 2009, SI 2009/261, which were made for the purposes of implementing European Parliament and EC Council Regulation 842/2006 ((OJ L161, 14.6.2006, p 1) on certain fluorinated greenhouse gases.

5 The activities are specified in the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, Sch 1 (amended by SI 2007/1096), under the following categories: energy activities; production and processing of ferrous metals; mineral industries; and other activities. See also PARA 616.

6 The emissions are specified in relation to the activities (see note 5): see the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, Sch 1 (as amended: see note 5). At the date at which this volume states the law, carbon dioxide is the specified emission in each case.

7 Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 7.

8 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 8 (amended by SI 2007/3538).

9 As to the Environment Agency see PARA 68 et seq.

10 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 9. As to appeals against refusal of a permit see regs 32, 34, Schs 2-4 (reg 32, Sch 2 amended by SI 2006/737; and SI 2007/3433).

- 11 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 10.
- 12 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 11. As to appeals against a decision in this regard see regs 33, 34, Schs 2-4 (reg 33, Sch 2 amended by SI 2006/737; and SI 2007/3433).
- 13 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 12.
- 14 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 13. The activities are those set out in Sch 1: see note 5.
- 15 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 14. As to appeals see regs 32-34, Schs 2-4 (as amended: see note 10).
- 16 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 15 (amended by SI 2006/737; and SI 2007/3433). As to appeals see the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, regs 32-34, Schs 2-4 (as amended: see note 10).
- 17 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 16 (amended by SI 2006/737; and SI 2007/3433). As to appeals see the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, regs 32-34, Schs 2-4 (as amended: see note 10).
- 18 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 17 (amended by SI 2006/737).
- 19 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 18. As to charging schemes for offshore installations see reg 19 (amended by SI 2006/737); and PARA 616.
- 20 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 20. For the purposes of the 2005 Regulations, the document entitled 'EU Emissions Trading scheme: Approved Phase II National Allocation Plan 2008-2012' published by the Secretary of State on 16 March 2007, was specified as the approved national allocation plan for the five-year period beginning on 1 January 2008: Greenhouse Gas Emissions Trading Scheme (Miscellaneous Provisions) Regulations 2007, SI 2007/1096. Previously the document entitled 'Approved National Allocation Plan 2005-2007', published by the Secretary of State on 24 May 2005, was specified as the approved national allocation plan in respect of the first phase: see the Greenhouse Gas Emissions Trading Scheme (Approved National Allocation Plan) Regulations 2005, SI 2005/1387; and in regard to that previous scheme see also *R (on the application of Cemex UK Cement Ltd) v Department for Environment, Food and Rural Affairs* [2006] EWHC 3207 (Admin), [2006] All ER (D) 181 (Dec) (judicial review challenge to allocation policy failed).
- 21 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 21 (amended by SI 2007/3433). The Secretary of State may decide to allocate allowances by way of auction or sale: see the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 21A (added by SI 2007/465; and amended by SI 2007/3433). As to appeals see the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, regs 32-34, Schs 2-4 (as amended: see note 10). Further as to allowances see also regs 22-25, 27A (amended by SI 2005/2903; SI 2006/737; and SI 2007/3433). See also PARA 261.
- 22 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 26 (amended by SI 2005/2903; SI 2006/737; and SI 2007/3433).
- 23 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 27.
- 24 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 28.
- 25 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 29.
- 26 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 30 (amended by SI 2007/3433). As to appeals see the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, regs 32-34, Schs 2-4 (as amended: see note 10).
- 27 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 31.
- 28 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 35 (amended by SI 2005/2903; SI 2006/737).
- 29 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 37. As to appeals see regs 32-34, Schs 2-4 (as amended: see note 10).

- 30 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 38.
- 31 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, regs 39-41 (reg 39 amended by SI 2007/3433).
- 32 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, regs 42-45.

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261. Charges for allocations of allowances.

The Treasury¹ has power to impose charges by providing for certain allowances to be allocated in return for payment².

Under the Finance Act 2007³ the Treasury may impose, by regulations made by statutory instrument⁴, charges by providing for Community tradeable emissions allowances⁵ to be allocated in return for payment⁶. Such regulations must make provision for and in connection with allocations of allowances in return for payment and for allocations to be overseen by an independent person appointed by the Treasury⁷. The regulations may make any other provision about allocations which the Treasury considers appropriate, including (in particular) provision:

- 329 (1) as to the imposition of fees, and as to the making and forfeiting of deposits, in connection with participation in allocations⁸;
- 330 (2) as to the persons by whom allocations are to be conducted⁹;
- 331 (3) for creation of criminal offences, or for the imposition and recovery of civil penalties for failure to comply with the terms of a scheme¹⁰;
- 332 (4) for and in connection with the recovery of payments due in respect of allowances allocated (including provision as to the imposition and recovery of interest and penalties)¹¹; and
- 333 (5) conferring rights of appeal against decisions made in allocations, the forfeiting of deposits and the imposition of penalties (including provision specifying the person, court or tribunal to hear and determine appeals)¹².

The Treasury may make schemes about the conduct and terms of allocations (to have effect subsequent to any such regulations¹³); and schemes may in particular include provision about who may participate in the allocation, the allowances to be allocated, and where and when allocations are to take place¹⁴.

Under the Finance Act 2008¹⁵ charges may (and may only) be imposed by regulations¹⁶ made by the Treasury by providing for carbon reduction trading scheme allowances¹⁷ to be allocated in return for payment¹⁸.

The regulations may make any other provision about allocations of allowances which the Treasury considers appropriate, including (in particular) provision:

- 334 (a) as to the imposition of fees and as to the making and forfeiting of deposits, in connection with participation in the allocations¹⁹;
- 335 (b) as to the persons by whom allocations are to be conducted²⁰;
- 336 (c) for allocations to be overseen by an independent person appointed by the Treasury²¹;
- 337 (d) for the imposition and recovery of penalties for failure to comply with the terms of a scheme²²;
- 338 (e) for and in connection with the recovery of payments due in respect of allowances allocated (including provision as to the imposition and recovery of interest and penalties)²³; and
- 339 (f) provision conferring rights of appeal against decisions made in allocations, the forfeiting of deposits and the imposition of penalties (including provision specifying the person, court or tribunal to hear and determine appeals)²⁴.

The Treasury may make schemes about the conduct and terms of allocations (to have effect subsequent to any regulations made under these provisions); and schemes may in particular include provision about who may participate in allocations, the allowances to be allocated, and where and when allocations are to take place²⁵.

- 1 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.
- 2 See the Finance Act 2007 s 16; the Finance Act 2008 s 21; and the text and notes 3-25.
- 3 Ie the Finance Act 2007 s 16.
- 4 A statutory instrument containing any such regulations is subject to annulment in pursuance of a resolution of the House of Commons unless a draft thereof has been laid before, and approved by a resolution of, that House: Finance Act 2007 s 16(8). See note 7.
- 5 'Community tradeable emissions allowances' are transferable allowances which (1) relate to the making of emissions of greenhouse gases; and (2) are allocated as part of a system made for the purpose of implementing any Community obligation of the United Kingdom relating to such emissions: Finance Act 2007 s 16(6). 'Greenhouse gases' means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride: s 16(6).
- 6 Finance Act 2007 s 16(1), (7).
- 7 Finance Act 2007 s 16(2), (3). For regulations made under the Finance Act 2007 s 16(2)-(4) see the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2008, SI 2008/1825 (amended by SI 2008/1939).
- 8 Finance Act 2007 s 16(4)(a). See note 7.
- 9 Finance Act 2007 s 16(4)(b). See note 7.
- 10 Finance Act 2007 s 16(4)(c) (amended by the Finance Act 2008 s 16(2)). See note 5. The Finance Act 2007 s 16(4)(c) does not permit the creation of a criminal offence with maximum penalties in excess of the maximum penalties which an instrument under the European Communities Act 1972 s 2(2) may provide in respect of an offence created by such an instrument: s 16(6A) (added by the Finance Act 2008 s 16(3)).
- 11 Finance Act 2007 s 16(4)(d). See note 7.
- 12 Finance Act 2007 s 16(4)(e). See note 7.
- 13 Ie regulations under the Finance Act 2007 s 16.
- 14 Finance Act 2007 s 16(5).
- 15 Ie the Finance Act 2008 s 21.
- 16 Regulations under the Finance Act 2008 s 21 are to be made by statutory instrument: s 21(6). A statutory instrument containing the first regulations under s 21 may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the House of Commons: s 21(7). Any other statutory instrument containing regulations under s 21 is subject to annulment in pursuance of a resolution of the House of Commons unless a draft of the regulations has been laid before, and approved by a resolution of, that House: s 21(8).
- 17 'Carbon reduction trading scheme allowances' are tradable allowances that are provided for in a relevant trading scheme, and represent the right to carry on a specified (ie in the relevant trading scheme) amount of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions: Finance Act 2008 s 21(5). A 'relevant trading scheme' means a trading scheme that (1) is made under the Climate Change Act 2008 Pt 3 (ss 44-55) (see PARA 264 et seq); (2) applies to persons by reference to their consumption of electricity (whether or not by reference to other matters as well); and (3) applies only to persons who consume electricity (a) for business or charitable purposes, or (b) for the performance of functions of a public nature (whether or not they also consume electricity for other purposes): Finance Act 2008 s 21(5).
- 18 Finance Act 2008 s 21(1), (2).

- 19 Finance Act 2008 s 21(3)(a).
- 20 Finance Act 2008 s 21(3)(b).
- 21 Finance Act 2008 s 21(3)(c).
- 22 Finance Act 2008 s 21(3)(d).
- 23 Finance Act 2008 s 21(3)(e).
- 24 Finance Act 2008 s 21(3)(f).
- 25 Finance Act 2008 s 21(4).

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(2) CARBON TARGET AND BUDGETING

262. Carbon target and budgeting.

Under Part 1 of the Climate Change Act 2008¹ the Secretary of State² has a duty to reduce the net UK carbon account³ for the year 2050 to at least 80 per cent below the level of net UK emissions⁴ of targeted greenhouse gases⁵ in 1990⁶.

The Secretary of State is required to set 'carbon budgets' representing UK emissions for five year periods beginning with the period 2008-2012, taking account of any 'carbon units' which are credited or debited to the net UK carbon account under a system of 'carbon accounting'⁷.

There are also provisions on the limit on the use of carbon units⁸; indicative annual ranges⁹; proposals and policies for meeting carbon budgets¹⁰; annual statements of UK emissions and determination whether objectives have been met¹¹; alteration of budgets or budgetary periods¹²; targeted greenhouse gases¹³; carbon units and accounting etc¹⁴; and miscellaneous matters¹⁵.

1 le the Climate Change Act 2008 Pt 1 (ss 1-31): see **FUEL AND ENERGY**.

2 As to the Secretary of State see PARA 58.

3 As to the meaning of 'net UK carbon account' see the Climate Change Act 2008 s 27; and **FUEL AND ENERGY**.

4 As to the meaning of 'net UK emissions' see the Climate Change Act 2008 s 29; and **FUEL AND ENERGY**.

5 As to the meaning of 'targeted greenhouse gases' see the Climate Change Act 2008 s 24; and **FUEL AND ENERGY**.

6 See the Climate Change Act 2008 ss 1-3; and **FUEL AND ENERGY**.

7 See generally the Climate Change Act 2008 ss 4-10 (s 5 amended by SI 2009/1258); the Climate Change Act (2020 Target, Credit and Definitions) Order 2009, SI 2009/1258; the Carbon Budgets Order 2009, SI 2009/1259; and **FUEL AND ENERGY**.

8 See the Climate Change Act 2008 s 11; the Climate Change Act (2020 Target, Credit and Definitions) Order 2009, SI 2009/1258; and **FUEL AND ENERGY**.

9 See the Climate Change Act 2008 s 12; and **FUEL AND ENERGY**.

10 See the Climate Change Act 2008 ss 13-15; and **FUEL AND ENERGY**.

11 See the Climate Change Act 2008 ss 16-20; and **FUEL AND ENERGY**.

12 See the Climate Change Act 2008 ss 21-23; and **FUEL AND ENERGY**.

13 See the Climate Change Act 2008 ss 24-25; and **FUEL AND ENERGY**.

14 See the Climate Change Act 2008 ss 26-28; the Carbon Accounting Regulations 2009, SI 2009/1257 (amended by SI 2009/3146); and **FUEL AND ENERGY**.

15 See the Climate Change Act 2008 ss 29-31; and **FUEL AND ENERGY**.

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(3) COMMITTEE ON CLIMATE CHANGE

263. Committee on Climate Change.

Part 2 of the Climate Change Act 2008¹ establishes a new independent non-departmental public body, the Committee on Climate Change². The Committee has duties to advise the Secretary of State³ on a review of the 2050 target, on the levels of carbon budgets and on the apportionment of effort between reductions in domestic emissions levels and the use of carbon units⁴. The Committee must also advise on emissions from international aviation and international shipping and on the amount of effort to be made by sectors of the economy in trading schemes, and other sectors of the economy⁵.

The Committee is given the function of making an annual report to Parliament and the devolved legislatures on the progress that is being made towards meeting the objectives in Part 1 of the Climate Change Act 2008⁶, and after the end of each budget period the Committee must include in its annual report its views on the way in which the budget for the period was or was not met and action taken during the period to reduce net UK emissions of targeted greenhouse gases⁷. There are also provisions on the Committee's powers, the powers of the Secretary of State and the devolved administrations to make grants to the Committee and to issue guidance and directions to the Committee⁸, and the Committee's constitution is set out⁹.

1 le the Climate Change Act 2008 Pt 2 (ss 32-43): see **FUEL AND ENERGY**.

2 See the Climate Change Act 2008 s 32; and **FUEL AND ENERGY**. Reference should be made to the Committee's website and relevant reports. At the date at which this volume states the law, the website is www.theccc.org.uk.

3 As to the Secretary of State see PARA 58.

4 See the Climate Change Act 2008 ss 33, 34; and **FUEL AND ENERGY**.

5 See the Climate Change Act 2008 s 35; and **FUEL AND ENERGY**.

6 le the Climate Change Act 2008 Pt 1 (ss 1-31): see PARA 262.

7 See the Climate Change Act 2008 ss 32-38; and **FUEL AND ENERGY**.

8 See the Climate Change Act 2008 ss 39-42; and **FUEL AND ENERGY**.

9 See the Climate Change Act 2008 Sch 1; and **FUEL AND ENERGY**.

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(4) TRADING SCHEMES

264. Authorities and regulations.

The relevant national authority¹ may make provisions by regulations² for trading schemes relating to greenhouse gas³ emissions⁴. A trading scheme is a scheme that operates by limiting or encouraging the limitation of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions, or encouraging activities that consist of, or that cause or contribute, directly or indirectly, to reductions in greenhouse gas emissions or the removal of greenhouse gas from the atmosphere⁵. For the purposes of Pt 3 of the Climate Change Act 2008⁶ activities are regarded as indirectly causing or contributing to greenhouse gas emissions if they involve, in particular the consumption of energy, the use of materials in whose production energy was consumed, the disposal otherwise than for recycling of materials in whose production energy was consumed, or the production or supply of anything whose subsequent use directly causes or contributes to greenhouse gas emissions⁷.

The relevant national authority may give guidance to the administrator⁸ of a trading scheme⁹. Such a national authority may give directions to the administrator¹⁰. Such a national authority may also make, or arrange for the making of, grants to the administrator of a trading scheme, or the participants¹¹ in a trading scheme¹².

1 The 'relevant national authority' for the purposes of the Climate Change Act 2008 Pt 3 (ss 44-55) is either the Welsh Ministers (see PARA 59 note 1) or the Secretary of State (see PARA 58): see s 47. As to a national authority's power to make consequential provision see s 54.

2 The Climate Change Act 2008 Sch 2 specifies matters that may or must be provided for in regulations under s 44 (see PARA 265): see s 46. Before making regulations under Pt 3, a national authority must obtain, and take into account, the advice of the Committee on Climate Change (see PARA 263): see s 48(1).

3 As to the meanings of 'greenhouse gas' and 'emissions' see **FUEL AND ENERGY**.

4 Climate Change Act 2008 s 44(1).

5 Climate Change Act 2008 s 44(2).

6 Ie the Climate Change Act 2008 Pt 3 (ss 44-55).

7 See the Climate Change Act 2008 s 45.

8 'Administrator', in relation to a trading scheme, means a person appointed as the administrator of the scheme by regulations under the Climate Change Act 2008 Sch 2 para 21 (see PARA 265): see s 55.

9 See the Climate Change Act 2008 s 51.

10 See the Climate Change Act 2008 s 52.

11 'Participant', in relation to a trading scheme, means a person to whom the scheme applies by virtue of regulations under the Climate Change Act 2008 Sch 2 para 4 or 15 (see PARA 265): see s 55.

12 See the Climate Change Act s 53.

UPDATE

264 Authorities and regulations

NOTE 4--In exercise of the power so conferred, Her Majesty has made the CRC Energy Efficiency Scheme Order 2010, SI 2010/768.

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265. Schemes limiting activities.

The Climate Change Act 2008¹ specifies matters that may or must be provided for in regulations². The Act³ deals with trading schemes⁴ that operate by limiting or encouraging the limitation of activities that consist of the emission of greenhouse gas⁵ or that cause or contribute, directly or indirectly, to such emissions⁶. The regulations must specify the period or periods by reference to which the scheme is to operate (a 'trading period')⁷. The regulations must identify the activities to which the trading scheme applies and may do so by reference to any, or any combination of, criteria and in particular may identify the activities by reference to the locations or locations at which they are carried on, or may be expressed to apply to all activities of a particular kind carried on in the United Kingdom⁸ or a part of the United Kingdom⁹. The regulations must identify the persons to whom the trading scheme applies (the 'participants')¹⁰. The regulations may provide for the allocation among the participants of allowances representing the right to carry on a specified amount of the activities in a trading period¹¹. The regulations may require each participant to have or acquire enough allowances to match the participant's activities in a trading period, subject to any offsetting¹². The regulations may enable participants to offset the carrying on of the activities in a trading period by acquiring credits representing a reduction in an amount of greenhouse gas emissions, or the removal of an amount of greenhouse gas from the atmosphere¹³. The regulations may provide that a participant who does not have or acquire enough allowances or credits to match or offset the participant's activities in a trading period must pay an amount specified in or determined in accordance with the regulations within the period so specified¹⁴. The regulations must provide for the participants in a trading scheme to trade in any allowances or credits under the scheme¹⁵. Finally the regulations may provide that participants may only carry on activities to which the trading scheme applies, or specified activities to which the scheme applies, if they hold a permit¹⁶.

1 Ie the Climate Change Act 2008 Sch 2.

2 See the Climate Change Act 2008 s 46. The regulations referred to are those under s 44: see PARA 264.

3 Ie the Climate Change Act 2008 Sch 2 Pt 1.

4 As to trading schemes generally see PARA 264.

5 As to the meanings of 'greenhouse gas' and 'emissions' see **FUEL AND ENERGY**.

6 Climate Change Act 2008 Sch 2 para 1.

7 Climate Change Act 2008 Sch 2 para 2. 'Trading period', in relation to a trading scheme, means a period by reference to which the scheme is to operate by virtue of regulations under Sch 2 para 2 or 13: see s 55.

8 As to the meaning of 'United Kingdom' see PARA 1 note 2.

9 See the Climate Change Act 2008 Sch 2 para 3.

10 See the Climate Change Act 2008 Sch 2 para 4. As to the meaning of 'participant' see PARA 264 note 11.

11 See the Climate Change Act 2008 Sch 2 para 5.

12 See the Climate Change Act 2008 Sch 2 para 6. The offsetting is in accordance with provision made under Sch 2 para 7.

- 13 See the Climate Change Act 2008 Sch 2 para 7.
- 14 See the Climate Change Act 2008 Sch 2 para 8.
- 15 See the Climate Change Act 2008 Sch 2 para 9.
- 16 See the Climate Change Act 2008 Sch 2 para 10. As to the recognition of units under other schemes see Sch 2 para 11.

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266. Schemes encouraging activities.

The Climate Change Act 2008¹ deals with trading schemes² that operate by encouraging activities that consist of, or that cause or contribute, directly or indirectly to reductions in greenhouse gas emissions³, or the removal of greenhouse gas from the atmosphere⁴. The regulations⁵ must specify the period or periods by reference to which the scheme is to operate (a 'trading period')⁶. The regulations must identify the activities to which the trading scheme applies⁷. The regulations must identify the persons to whom the trading scheme applies (the 'participants')⁸. The regulations must for each trading period set a target for the total amount of the activities, and impose, or provide for the imposition of, an obligation on each participant in relation to the carrying on of a specified amount of the activities in the period⁹. The regulations must provide for the issue of certificates evidencing the carrying on of the activities in a trading period¹⁰. The regulations may provide that a participant who does not have enough certificates at the end of a trading period to comply with the participant's obligations under the trading scheme must pay an amount specified in or determined in accordance with the regulations within the period so specified¹¹. Finally the regulations must provide for the participants in a trading scheme to trade in certificates¹².

1 le the Climate Change Act 2008 Sch 2 Pt 2.

2 As to trading schemes generally see PARA 264.

3 As to the meanings of 'greenhouse gas' and 'emissions' see **FUEL AND ENERGY**.

4 Climate Change Act 2008 Sch 2 para 12.

5 As to regulations see PARA 264.

6 Climate Change Act 2008 Sch 2 para 13. As to the meaning of 'trading period' see PARA 265 note 7.

7 See the Climate Change Act 2008 Sch 2 para 14.

8 See the Climate Change Act 2008 Sch 2 para 15. As to the meaning of 'participant' see PARA 264 note 11.

9 Climate Change Act 2008 Sch 2 para 16.

10 See the Climate Change Act 2008 Sch 2 para 17.

11 See the Climate Change Act 2008 Sch 2 para 18.

12 See the Climate Change Act 2008 Sch 2 para 19. As to the recognition of units under other schemes see Sch 2 para 20.

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267. Administration and enforcement.

The Climate Change Act 2008 includes provisions¹ dealing with administration and enforcement in relation to trading schemes² including provision regarding the administrator³ of a trading scheme⁴; information to be provided⁵; the creation and maintenance of a register of information relating to a trading scheme⁶; the publication of information⁷; the acquisition of units by the administrator⁸; the imposition of charges⁹; monitoring compliance with the requirements of a trading scheme¹⁰; conferring powers to require the production of documents, question officers of a company, enter premises or seize documents¹¹; penalties¹²; offences¹³; and appeals¹⁴.

In relation to trading schemes, there are provisions relating to regulations made by a single national authority¹⁵; regulations made by two or more national authorities¹⁶; and provisions conferring power to make provision by Order in Council¹⁷.

Further provisions¹⁸ confer powers to require information for the purposes of enabling a trading scheme to be established. In particular, provision is made regarding which authorities may exercise those powers¹⁹; information from electricity suppliers and distributors²⁰; information from potential participants in a trading scheme²¹; requirements for a valid notice requiring information²²; failure to comply with a notice²³; and the disclosure of information obtained from an electricity supplier or electricity distributor or a potential participant²⁴.

- 1 le the Climate Change Act 2008 Sch 2 Pt 3.
- 2 As to trading schemes generally see PARA 264.
- 3 As to the meaning of 'administrator' see PARA 264 note 8.
- 4 See the Climate Change Act 2008 Sch 2 para 21.
- 5 See the Climate Change Act 2008 Sch 2 para 22.
- 6 See the Climate Change Act 2008 Sch 2 para 23.
- 7 See the Climate Change Act 2008 Sch 2 para 24.
- 8 See the Climate Change Act 2008 Sch 2 para 25.
- 9 See the Climate Change Act 2008 Sch 2 para 26.
- 10 See the Climate Change Act 2008 Sch 2 para 27.
- 11 See the Climate Change Act 2008 Sch 2 para 28.
- 12 See the Climate Change Act 2008 Sch 2 para 29.
- 13 See the Climate Change Act 2008 Sch 2 para 30.
- 14 See the Climate Change Act 2008 Sch 2 para 31.
- 15 See the Climate Change Act 2008 s 49, Sch 3 Pt 1.
- 16 See the Climate Change Act 2008 s 49, Sch 3 Pt 2.
- 17 See the Climate Change Act 2008 s 49, Sch 3 Pt 3.

- 18 See the Climate Change Act 2008 s 50, Sch 4.
- 19 See the Climate Change Act 2008 Sch 4 para 1.
- 20 See the Climate Change Act 2008 Sch 4 para 2.
- 21 See the Climate Change Act 2008 Sch 4 para 3.
- 22 See the Climate Change Act 2008 Sch 4 para 4
- 23 See the Climate Change Act 2008 Sch 4 para 5.
- 24 See the Climate Change Act 2008 Sch 4 para 6.

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(5) IMPACT AND ADAPTATION TO CLIMATE CHANGE

268. Impact and adaptation to climate change.

Part 4 of the Climate Change Act 2008¹ places a duty on the Secretary of State² to carry out an assessment of the risks to the United Kingdom³ from the impact of climate change; the first report must be made within three years, with subsequent reports at least every five years⁴. Each risk assessment must be followed by the publication of a government programme of adaptation measures⁵.

The Committee on Climate Change⁶ is given two functions under Part 4: (1) it must advise the Secretary of State on his report on the risks to the United Kingdom from the impact of climate change⁷; (2) it must report to Parliament on the progress being made in implementing the programme of adaptation measures⁸.

There are also provisions giving the Secretary of State and the Welsh Ministers⁹ the power to issue guidance and directions to persons or bodies with functions of a public nature and statutory undertakers¹⁰ on assessing the risks of climate change¹¹, and on the preparation of reports setting out policies and proposals for addressing those risks and assessing the progress made towards implementing those proposals and policies¹².

1 le the Climate Change Act 2008 Pt 4 (ss 56-70).

2 As to the Secretary of State see PARA 58.

3 As to the meaning of 'United Kingdom' see PARA 1 note 2.

4 See the Climate Change Act 2008 s 56; and **FUEL AND ENERGY**.

5 See the Climate Change Act 2008 s 58; and **FUEL AND ENERGY**. There is a parallel requirement on the relevant Northern Ireland department to publish an adaptation programme in Northern Ireland: see s 60.

6 As to the Committee for Climate Change see PARA 263.

7 See the Climate Change Act 2008 s 57; and **FUEL AND ENERGY**.

8 See the Climate Change Act 2008 s 59; and **FUEL AND ENERGY**.

9 As to the meaning of 'Welsh Ministers' see PARA 59 note 1.

10 See the Climate Change Act 2008 ss 63-65, 68, 69; and **FUEL AND ENERGY**.

11 See the Climate Change Act 2008 ss 61, 66; and **FUEL AND ENERGY**.

12 See the Climate Change Act 2008 ss 62, 67; and **FUEL AND ENERGY**.

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(6) WASTE REDUCTION SCHEMES AND RELATED MATTERS

269. Miscellaneous provisions of the Climate Change Act 2008.

Part 5 of the Climate Change Act 2008¹ contains a number of measures intended to reduce emissions. In regard to waste reduction schemes the relevant provisions² prospectively amend the Environmental Protection Act 1990³, allowing waste collection authorities designated by the Secretary of State⁴ to introduce pilot waste reduction schemes⁵. Following the operation of such pilot schemes, the Secretary of State must carry out a review and report to Parliament⁶; and after the review of and report on the pilot schemes, the provisions allow the Secretary of State to extend provisions for use by other waste collection authorities (with any necessary amendments) or to repeal the provisions⁷. Provision is also made about receptacles for the collection of household waste⁸.

Further provisions introduce enabling powers to make regulations about charging by sellers of goods for the supply of single use carrier bags; and such regulations may also require records relating to the charges to be kept and made publicly available and also included are powers to create civil sanctions in the form of fixed monetary penalties and discretionary requirements for breaches of the regulations⁹.

Part 5 of the Climate Change Act 2008 also has provisions¹⁰ amending Chapter 5 of Part 2 of the Energy Act 2004¹¹ which provides for the Secretary of State by order to set up a renewable transport fuel obligations scheme. The amendments introduce a new power to replace the administrator with a new administrator, who may be the Secretary of State, and to transfer functions accordingly; amend the provisions which determine how sums received by the administrator are to be dealt with; give the Secretary of State a power to issue written directions to the administrator; impose a duty on the administrator to promote the supply of sustainable fuel which has a beneficial environmental effect; and set up an information gateway to allow disclosure of information by Her Majesty's Revenue and Customs to the administrator: these provisions are covered elsewhere¹².

In regard to carbon emissions reduction targets Part 5 of the Climate Change Act 2008¹³ amends the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000 to allow for the introduction of a community energy saving programme; and this is covered elsewhere in this work¹⁴. Also covered elsewhere¹⁵ are changes from other provisions of Part 5 of the Climate Change Act 2008 relating to reporting requirements in Wales¹⁶; guidance on reporting of emissions¹⁷; requirements for the Secretary of State to conduct a review of the contribution that reporting can make to achieving the government's objectives in relation to climate change¹⁸; and for him to introduce mandatory reporting of emissions by companies by 6 December 2012 or to lay a report before Parliament explaining why he has chosen not to do so¹⁹; reports on the civil estate²⁰; the power of ministers and departments to offset greenhouse gas emissions²¹; and fines for offences relating to pollution²².

1 Ie the Climate Change Act 2008 Pt 5 (ss 71-88).

2 Ie the Climate Change Act 2008 s 71, Sch 5.

3 See the Environmental Protection Act 1990 s 60A, Sch 2AA (prospectively added by the Climate Change Act 2008 Sch 5 Pt 1 paras 1, 2); and PARA 704.

- 4 As to the Secretary of State see PARA 58.
- 5 See the Climate Change Act 2008 s 72; and PARA 704.
- 6 See the Climate Change Act 2008 s 73; and PARA 704.
- 7 See the Climate Change Act 2008 s 74, 75; and PARA 704.
- 8 See the Environmental Protection Act 1990 s 46(11) (added by the Climate Change Act 2008 s 76); and PARA 694.
- 9 See the Climate Change Act 2008 s 77, Sch 6; and PARA 653.
- 10 Ie the Climate Change Act 2008 s 78, Sch 7.
- 11 Ie the Energy Act 2004 Pt 2 Ch 5 (ss 124-132).
- 12 See **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1329 et seq.
- 13 Ie the Climate Change Act 2008 s 79, Sch 8.
- 14 See **FUEL AND ENERGY**.
- 15 See **FUEL AND ENERGY**.
- 16 See the Climate Change Act 2008 ss 80-82.
- 17 See the Climate Change Act 2008 s 83.
- 18 See the Climate Change Act 2008 s 84.
- 19 See the Climate Change Act 2008 s 85.
- 20 See the Climate Change Act 2008 s 86.
- 21 See the Climate Change Act 2008 s 87.
- 22 See the Climate Change Act 2008 s 88. This mostly involves a minor amendment to the Clean Neighbourhoods and Environment Act 2005 s 105(2) to enable an increase in fines for pollution offences: see PARA 187 note 23.

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7. POLLUTION OF WATER

(1) POLLUTION AT COMMON LAW

(i) Actionable Pollution

270. Meaning of 'pollution' in statute and at common law.

For the purposes of the Pollution Prevention and Control Act 1999, which enables regulations to be made for the purposes of integrated pollution prevention and control, 'environmental pollution' means pollution of the air, water or land which may give rise to any harm¹; and for the purposes of this definition, but without prejudice to its generality, 'pollution' includes pollution caused by noise, heat or vibrations or any other kind of release of energy, and 'air' includes air within buildings and air within other natural or man-made structures above or below ground².

The 1999 Act prospectively repeals Part I of the Environmental Protection Act 1990, which contains a statutory system of integrated pollution control³. For the purposes of that statutory system, 'pollution of the environment' means pollution of the environment due to the release, into any environmental medium, from any process⁴ of substances which are capable of causing harm⁵ to man or any other living organisms supported by the environment⁶. The 'environment' consists of all, or any, of the following media, namely, the air⁷, water and land⁸; and a substance⁹ is released into any environmental medium whether it is released into it within or outside Great Britain¹⁰. In relation to water, 'release' includes any entry, including any discharge, of the substance into water¹¹. Any release into:

- 340 (1) the sea or the surface of the sea bed;
- 341 (2) any river, watercourse, lake, loch or pond (whether natural or artificial or above or below ground) or reservoir or the surface of the riverbed or of other land supporting such waters; or
- 342 (3) ground waters¹²,

is a release into water, as is any release into a sewer¹³, while any release into land covered by water falling outside heads (1) to (3) above or the water covering such land, or into the land beneath the surface of the sea bed or of other land supporting waters falling within head (2) above is a release into land¹⁴. A sewer and its contents are, however, to be disregarded for the statutory purposes in determining whether there is pollution of the environment at any time¹⁵.

On the other hand, the common law meaning of 'pollution' is the doing of something which changes the natural qualities or properties of water¹⁶, whether chemically or in its temperature¹⁷ or otherwise. Any interference with the natural quantity or quality of the water may be actionable at common law as an infringement of proprietary rights, such as riparian rights¹⁸, or a right to take underground water¹⁹, or an easement to a flow of water²⁰, or a profit à prendre²¹, or a right of fishery²², or may be actionable under the common law relating to nuisance²³ or under the rule in *Rylands v Fletcher*²⁴. Other common law claims may also be available; for example, if the pollution takes the form of discharge of matter which is carried by the water to another person's land and results in deposits of solid wastes, a claim may possibly lie in

trespass²⁵. Liability may also arise in negligence²⁶. In general it is no defence to show that the pollution of a stream, due to the effluents separately discharged from different sources, is caused in a small degree only by the defendant. All that needs to be shown is that the polluter is materially contributing to the pollution²⁷.

Thus there is in general no right to pollute a natural watercourse, although a right to pollute water may be acquired by statute, express grant, implication of law or prescription²⁸. A right to discharge water does not include a right to discharge polluted water²⁹. There is no right at common law to discharge sewage into the sea in such a way as to cause an injury to another person, as by doing damage to an oyster bed³⁰. Pollution is also the subject of many statutory prohibitions and penalties³¹.

1 See the Pollution Prevention and Control Act 1999 s 1(3); and PARAS 160 note 16, 186 note 7. See further PARA 184 et seq. For a useful quasi-statutory definition see the Convention for the Protection of the Marine Environment of the North-east Atlantic (the 'Ospar Convention' opened for signature at the Ministerial Meeting of the Oslo and Paris Commissions, Paris, 21-22 September 1992) art 1(d) ('pollution' means the introduction by man, directly or indirectly, of substances or energy into the maritime area which results, or is likely to result, in hazards to human health, harm to living resources and marine ecosystems, damage to amenities or interference with other legitimate uses of the sea).

2 See the Pollution Prevention and Control Act 1999 s 1(2); and PARAS 160 note 16, 186 note 7.

3 See the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed); PARA 334; and see PARA 159 et seq. As to the prospective repeal of Pt I see PARA 159 note 2.

4 As to the meaning of 'process' see the Environmental Protection Act 1990 s 1(5), (6); and PARA 159 note 2.

5 As to the meaning of 'harm' see the Environmental Protection Act 1990 s 1(4); and PARAS 160 note 16, 186 note 7.

6 See the Environmental Protection Act 1990 s 1(3); and PARA 160 note 16. See also 'pollute' in the context of the Water Resources Act 1991 s 85: see PARA 219.

7 The medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground: Environmental Protection Act 1990 s 1(2).

8 See the Environmental Protection Act 1990 s 1(2); and see notes 3, 7.

9 'Substance' is treated as including electricity or heat: see the Environmental Protection Act 1990 s 1(13); and 159 note 9.

10 See the Environmental Protection Act 1990 s 1(10); and PARA 159 note 10.

11 See the Environmental Protection Act 1990 s 1(10)(b); and see note 10.

12 As to the meaning of 'ground waters' see the Environmental Protection Act 1990 s 1(12); and PARA 159 note 10.

13 Is a sewer within the meaning of the Water Industry Act 1991: see PARA 998.

14 See the Environmental Protection Act 1990 s 1(11)(a)-(c); and PARA 159 note 10. In relation to land, 'release' includes any deposit, keeping or disposal of the substance in or on land: Environmental Protection Act 1990 s 1(10)(c).

15 See the Environmental Protection Act 1990 s 1(11); and PARA 159 note 10.

16 Every riparian proprietor is entitled to the water of his stream in its natural flow, without sensible alteration of its character or quality: *John Young & Co v Bankier Distillery Co* [1893] AC 691 at 698, HL, per Lord Macnaghten.

17 *Tipping v Eckersley* (1855) 2 K & J 264; see also *Ormerod v Todmorden Joint Stock Mill* (1833) 11 QBD 155, CA; and *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA.

18 As to pollution infringing riparian rights see PARA 271.

19 *Cambridge Water Co v Eastern Counties Leather plc, Cambridge Water Co v Hutchings and Harding* [1994] 2 AC 264, [1994] 1 All ER 53, HL; *Ballard v Tomlinson* (1885) 29 ChD 115, CA. As to percolating water see PARA 272.

20 As to such easements see PARA 271 the text and note 5.

21 *Fitzgerald v Firbank* [1897] 2 Ch 96, CA.

22 *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA. Cf *Foster v Warblington UDC* [1906] 1 KB 648, CA.

23 See PARAS 274-275; and **NUISANCE**. Liability may arise either for a public or a private nuisance.

24 As to the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 see PARA 276.

25 *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 402-403. As to trespass see PARA 277.

26 As to negligence see PARA 277; and *Scott-Whitehead v National Coal Board* (1985) 53 P & CR 263 (but consider also *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 908, HL); see also *League against Cruel Sports Ltd v Scott* [1986] QB 240, [1985] 2 All ER 489; and *Esso Petroleum Co Ltd v Southport Corp* [1956] AC 218, [1955] 3 All ER 864, HL.

27 As to material contribution see PARA 281 the text and note 1.

28 See **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 215; see also PARA 278. A right to create a public nuisance or to interfere with a public right cannot be acquired by prescription: see PARA 275; and **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 216.

29 See **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 219.

30 *Foster v Warblington UDC* [1906] 1 KB 648, CA. See also PARA 274.

31 As to the various statutory controls on pollution of water see PARA 288 et seq.

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271. Pollution infringing riparian rights or easements.

The fouling of water in a natural stream flowing past the land of a riparian owner¹ is an infringement of a right of property of that owner, whether he is or is not owner of any part of the river bed, who is entitled to the flow of the water past his land in its natural state² of purity³; in such a case the riparian owner may maintain a claim without proof of damage⁴.

So, too, if a dominant owner has acquired an easement for the flow of water to his land in a pure state, the fouling of the water before it reaches his land constitutes an actionable interference with his right⁵. This, however, is a matter distinct from riparian rights, for riparian rights are derived from being a riparian owner and, as against other such owners, the riparian owner cannot, by purporting to grant them, transfer such rights wholly or in part to an owner of non-riparian land⁶.

1 As to riparian rights see **WATER AND WATERWAYS** vol 100 (2009) PARA 81 et seq.

2 This includes temperature: *Tipping v Eckersley* (1855) 2 K & J 264. Cf *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 182, 184, [1953] 1 All ER 179 at 198, 200, CA.

3 *Scott-Whitehead v National Coal Board* (1985) 53 P & CR 263 (discharge of water with high chloride content into river, ruining crops); and see *Wood v Waud* (1849) 3 Exch 748; *John Young & Co v Bankier Distillery Co* [1893] AC 691, HL; *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 402; *Stollmeyer v Trinidad Lake Petroleum Co Ltd* [1918] AC 485 at 491-492, PC; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 185, [1953] 1 All ER 179 at 200, CA. See also *Brodrick v Gale & Ainslie Ltd* (29 March 1993, unreported), Swindon County Court (escape from fish farm of rainbow trout into brown trout river causing harmful effects).

4 *Crossley & Sons Ltd v Lightowler* (1866) LR 3 Eq 279 at 296-298 (affd (1867) 2 Ch App 478); *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 402. See also *R v Dovermoss Ltd* (1995) 159 JP 448, [1995] 11 LS Gaz R 37, CA ('polluting' requires simply that a likelihood or capability of causing harm to animals, plants or those who use the water could be demonstrated. Actual harm is not necessary).

5 See PARA 273 the text and note 4; and **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 214.

6 *Stockport Waterworks Co v Potter* (1864) 3 H & C 300; *Ormerod v Todmorden Joint Stock Mill Co Ltd* (1883) 11 QBD 155, CA. However, the grant may confer rights as against the grantor; moreover, the position may be different if the stream is diverted so that other land becomes riparian: see *Nuttall v Bracewell* (1866) LR 2 Exch 1 at 13-14; *Ormerod v Todmorden Joint Stock Mill Co Ltd* above at 168-170.

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272. Percolating water.

Since a landowner has a right to take all that he can of underground water that is in no defined channel¹ beneath his land, he has a right of action against any other landowner who pollutes that underground water taken by that owner². Forseeability of harm of the relevant type by the defendants is, however, a prerequisite of the recovery of damages both in nuisance and under the rule in *Rylands v Fletcher*³.

1 See **WATER AND WATERWAYS** vol 100 (2009) PARA 105. Even if underground water is flowing in a defined channel, the right to a flow will not arise if the course and existence of the channel are unknown and cannot be ascertained without excavation: *Bradford Corp'n v Ferrand* [1902] 2 Ch 655, DC. As to the right to abstract percolating water not invalidating the grant of an easement of water, by an artificial watercourse, from a spring supplied by percolating water, cf *Schwann v Cotton* [1916] 2 Ch 120 at 139; affd [1916] 2 Ch 459 at 474, CA; applied in *Rance v Elvin* (1985) 50 P & CR 9, CA.

2 *Hodgkinson v Ennor* (1863) 4 B & S 229; *Womersley v Church* (1867) 17 LT 190 (although sewage matter had percolated rather than flowed through an underground channel, an injunction was nevertheless obtained to prevent the defendant from using a cesspool in such a manner as to pollute a well belonging to the plaintiff). As to injunctions to restrain pollution see PARAS 285-286.

3 *Cambridge Water Co v Eastern Counties Leather plc, Cambridge Water Co v Hutchings and Harding* [1994] 2 AC 264, [1994] 1 All ER 53, HL, where the House of Lords declined to impose liability for what it considered to be 'historic pollution'; that is a matter for Parliament; cf *Ballard v Tomlinson* (1885) 29 ChD 115. As to the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 see PARA 275.

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273. Artificial watercourses.

Where an artificial channel was made in such circumstances as to give the owners on its banks riparian rights¹, they have the same remedies to prevent pollution as have the owners on the banks of a natural stream², but it is doubtful whether the owner of land abutting on an artificial channel of a temporary nature can object to pollution³. Where the enjoyment of water flowing in an artificial channel over the premises of a person from abandoned mines had continued for more than 20 years, working of the mines in such a manner as to foul the water could not be resumed without infringing a right of the recipient owner to the flow of pure water⁴.

1 See *Rameshur Pershad Narain Singh v Koonj Behari Pattuk* (1878) 4 App Cas 121, PC (the assimilation of the legal status of an artificial watercourse to that of a natural watercourse must rest on some grant or arrangement, either proved or presumed, from or with the owners of the lands from which the water is artificially brought, or on some other legal origin); and **WATER AND WATERWAYS** vol 100 (2009) PARA 87. See also *Wood v Saunders* (1875) 10 Ch App 583n (express grant); *Gaved v Martyn* (1865) 13 LT 74 (prescriptive right).

2 *Sutcliffe v Booth* (1863) 32 LQB 136; *Blackburne v Somers* (1879) 5 LR 1r 1. Cf the cases cited in note 4.

3 *Arkwright v Gell* (1839) 5 M & W 203; *Greatrex v Hayward* (1853) 8 Exch 291; *Bartlett v Tottenham* [1932] 1 Ch 114; *Wood v Sutcliffe* (1851) 2 Sim NS 163; *Laing v Whaley* (1858) 3 H & N 675, Ex Ch.

4 *Magor v Chadwick* (1840) 11 Ad & El 571. Where there is an easement to discharge water it does not justify the discharge of foul drainage: see *Cawkwell v Russell* (1856) 26 LJ Ex 34. As to easements in relation to artificial watercourses see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 208 et seq.

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274. Private nuisance.

A person with riparian rights will be able to bring a claim in private nuisance if he can show that there has been an interference with the flow or an alteration to the character or quality of waters in his stream. An invasion of the natural right to water is treated as equivalent to damage to land¹, thereby circumventing the locality doctrine². Interference with a right to fish is also actionable as a private nuisance³. Liability for the nuisance rests with the person who caused it or who has adopted an existing nuisance known to him, and allowed it to continue⁴. The claimant must show that the defendant was responsible for some act or omission which was foreseeably liable to result in the relevant alteration⁵ and that damages are not too remote⁶.

1 *John Young & Co v Bankier Distillery Co* [1893] AC 691, HL. As to the cause of action see generally **NUISANCE**.

2 *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642 (a distinction was drawn between nuisances which cause 'material injury to property' and those which merely occasion 'personal discomfort').

3 *Nicholls v Ely Beet Sugar Factory* [1936] Ch 343, CA. See also *Cook v South West Water plc* [1992] Water Law 103.

4 *Sedleigh-Denfield v O'Callaghan* [1940] AC 880, [1940] 3 All ER 349, HL. See also *Leakey v National Trust for Places of Historic Interest or Natural Beauty* [1980] QB 485, [1980] 1 All ER 17, CA.

5 Actual harm need not be shown, merely a 'sensible alteration': see *Nicholls v Ely Beet Sugar Factory Ltd* [1936] Ch 343.

6 *Swan Fisheries Ltd v Holberton* (December 1987, unreported), QBD.

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275. Liability under the rule in *Rylands v Fletcher*.

If matter that is likely to do mischief is brought by a person onto his land and escapes from it to another's land and does foreseeable damage¹ by pollution there, that person is under an absolute liability for the damage naturally consequent on the escape². Under this rule the liability for pollution that may arise is an absolute or strict liability³. Liability may, however, be excluded by statute⁴, and it is perhaps uncertain how far the rule applies to a statutory water undertaker which constructs sewers under statutory authority⁵.

1 *Cambridge Water Co v Eastern Counties Leather plc, Cambridge Water Co v Hutchings and Harding* [1994] 2 AC 264, [1994] 1 All ER 53, HL (liability under this doctrine depends on the harm being reasonably foreseeable at the time when the escape causing the pollution occurred or was continuing to occur).

2 *Rylands v Fletcher* (1868) LR 3 HL 330. As to this rule generally see **WATER AND WATERWAYS** vol 101 (2009) PARA 667; and **NUISANCE** vol 78 (2010) PARA 148 et seq. Such escape will include the pollution of water by the escape of matter: see eg *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA. See also generally *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1, [2004] 1 All ER 589.

3 *Smeaton v Ilford Corp* [1954] Ch 450 at 465-466, [1954] 1 All ER 923 at 929 (citing *Fletcher v Rylands* (1866) LR 1 Exch 265 at 279 per Blackburn J; *Humphries v Cousins* (1877) 2 CPD 239, DC; *Foster v Warblington UDC* [1906] 1 KB 648, CA; *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 405; *Haigh v Deudraeth RDC* [1945] 2 All ER 661). The polluter may also be absolutely liable under the Environmental Protection Act 1990 s 73(6) if he has deposited poisonous, noxious or polluting matter on land or in a self-contained lake or pond so as to commit an offence under s 33(1) or s 63(2): see PARA 660.

4 *Smeaton v Ilford Corp* [1954] Ch 450 at 477-478, [1954] 1 All ER 923 at 936-937, where it was held that the Public Health Act 1936 s 31 (repealed: see now the Water Industry Act 1991 s 117(6); and PARA 1004 et seq), which required a water authority so to discharge its sewerage functions under that Act as not to create a nuisance, absolved an authority from liability under *Rylands v Fletcher* (1868) LR 3 HL 330 provided the authority did not create a nuisance.

5 See *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 176, 189, [1953] 1 All ER 179 at 195, 203, CA; and PARA 279.

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276. Public nuisance.

The pollution of water to the danger of the health or lives of the public is actionable for the protection of the public. Proceedings may be brought by a local authority in its own name¹ or in the name of the Attorney General². If a private individual or a corporate body has suffered damage over and above that sustained by members of the public as such, that individual or body may also commence proceedings³. Public nuisance is also a common law offence⁴. Cases of public nuisance by, for example, the discharge of sewage may involve also the infringement of statutory terms and conditions for the exercise of sanitary powers by water or sewerage undertakers⁵, and in such cases proceedings lie at the instance of the Attorney General, without proof of damage, for the infringement⁶. A right to commit a public nuisance by pollution cannot be acquired by prescription⁷.

1 See the Local Government Act 1972 s 222; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 573. See also *Solihull Metropolitan Borough Council v Maxfern Ltd* [1977] 2 All ER 177, [1977] 1 WLR 127; and *Kent County Council v Batchelor* [1978] 3 All ER 980, [1979] 1 WLR 213.

2 See *A-G v Grand Junction Canal Co* (1909) 73 JP 421; *A-G v Logan* (1891) 55 JP 615. As to relator actions see **CIVIL PROCEDURE** vol 11 (2009) PARAS 236-237.

3 As to such claims generally see **NUISANCE**; and see eg *Hart v Anglian Water Services Ltd* [2003] EWCA Crim 2243, [2004] 1 Cr App Rep (S) 374, [2003] All ER (D) 551 (Jul) (claim for breach of statutory duty, where the court commented unfavourably on the Environment Agency's failure to take proceedings against the polluter). See also *Benjamin v Storr* (1874) 30 LT 362; *Hickey v Electric Reduction Co of Canada* (1970) 21 DLR (3d) 368 (professional fishermen will have no right of action for any loss of income due to pollution causing fish mortality as their right to fish is the same as that of the general public). However, if there is a private right in the polluted waters, the holder will be able to recover his losses: *Foster v Warblington UDC* [1906] 1 KB 648. See also *AB v South West Water Services Ltd* [1993] QB 507, [1993] 1 All ER 609, CA.

4 *R v Medley* (1834) 6 C & P 292 (the chairman, deputy chairman and other directors of a gas company were convicted of fouling, by their officers and managers, the waters of the Thames); *R v Bradford Navigation Co* (1865) 6 B & S 631 (in purported exercise of statutory powers, the company continued to supply its canal from a polluted stream). The offence is triable either summarily or on indictment: see the Magistrates' Courts Act 1980 s 17(1), Sch 1 para 1; and **NUISANCE** vol 78 (2010) PARA 174. For examples of criminal liability for public nuisance see **NUISANCE** vol 78 (2010) PARA 106.

5 As to the meanings of 'water undertaker' and 'sewerage undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 4.

6 See PARA 279 the text and note 8.

7 *A-G v Barnsley Corp* [1874] WN 37. See further **NUISANCE** vol 78 (2010) PARA 108.

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277. Other common law claims.

If the pollution takes the form of discharge of matter which is carried by the water and deposited on another person's land, a claim may lie in trespass¹. Trespass is actionable without the need for proof of damage²; however, the actionable behaviour must arise through a negligent³ or intentional act of the defendant⁴. If the pollution was caused accidentally but the accident resulted from the defendant's indifference to the risk he may be considered 'negligent' for these purposes⁵.

Liability in negligence may also arise where the courts consider it reasonable to impose a duty of care⁶ on a person causing pollution of water to a claimant who might reasonably be expected to be affected by it⁷.

1 See PARA 270; and *Jones v Llanrwst District Council* [1911] 1 Ch 393 at 402-403 (the owner of a river bed claimed successfully in trespass for deposits of solid wastes); but cf *Esso Petroleum Co Ltd v Southport Corp* [1956] AC 218 at 242, [1955] 3 All ER 864 at 872, HL (where emphasis was placed on the requirement of direct injury for an action in trespass to be maintained). For an example of a claim in trespass see *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1952] 1 All ER 1326 (affd [1953] Ch 149, [1953] 1 All ER 179, CA); and cf *Dell v Chesham UDC* [1921] 3 KB 427 at 432.

2 *Entick v Carrington* (1765) 2 Wils 275 at 291.

3 Negligence on the part of the defendant may suffice: see *Fowler v Lanning* [1959] 1 QB 426, [1959] 1 All ER 290; see also *Esso Petroleum Co Ltd v Southport Corp* [1956] AC 218 at 242, [1955] 3 All ER 864 at 872, HL, per Lord Radcliffe, and at 244 and 873 per Lord Tucker.

4 See Howarth and McGillivray *Water Pollution and Water Quality Law* (2001) p 141.

5 *League against Cruel Sports Ltd v Scott* [1986] QB 240, [1985] 2 All ER 489. As to foreseeability of harm see eg *Savage v Fairclough* [1999] All ER (D) 942, CA.

6 See *Caparo Industries plc v Dickman* [1990] 2 AC 605, [1990] 1 All ER 568, HL; and **NEGLIGENCE** vol 78 (2010) PARA 4.

7 *Scott-Whitehead v National Coal Board* (1985) 53 P & CR 263 (water authority was under a duty of care to warn riparian occupiers of adverse effects that might arise from the operation of a discharge consent). The exact reasoning behind this decision must now be re-assessed in the light of (1) the restriction on the liability of public authorities for negligence in the exercise of their duties (see *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 908, HL, per Lord Bridge); and (2) the replacement of water authorities which were public bodies with water undertakers and sewerage undertakers which are private companies (see **WATER AND WATERWAYS** vol 100 (2009) PARA 108 et seq).

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278. Defences.

It will be a defence to show that the defendant has gained an easement amounting to a legal right to pollute water by prescription¹, although such a right will now be difficult to establish². A public nuisance can never be legalised by prescription³. Other defences to an actionable nuisance are that it resulted from an 'act of God'⁴ or was an inevitable accident, or was committed by the act of a third party such as a trespasser⁵ or that the discharge was made under statutory authority or that the claimant encouraged the creation of the nuisance⁶. It may also be possible to show that the claimant contributed to the damage he suffered by his own negligence⁷. A defence of necessity will be available to a claim in trespass provided there was no negligence on the part of the defendant in creating or contributing to the necessity⁸.

1 See PARA 270. See also **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 215.

2 *Scott-Whitehead v National Coal Board* (1985) 53 P & CR 263. It is not possible to acquire a prescriptive right where the act relied upon to gain the right is illegal. In most water pollution cases the polluting activity will be illegal.

3 *R v Cross* (1812) 3 Camp 224; *A-G v Barnsley Corpn* [1874] WN 37; *Hulley v Silversprings Bleaching Co* (1922) 86 JP 30.

4 *Nichols v Marsland* (1876) 2 Ex D 1, 46 LJQB 174, CA; cf *Lord Chesham v Chesham UDC* (1935) 79 Sol Jo 453; *Cambridge Water Co v Eastern Counties Leather plc*, *Cambridge Water Co v Hutchings and Harding* [1994] 2 AC 264, [1994] 1 All ER 53, HL.

5 Liability in such cases will depend upon proof that the defendant has 'continued' or 'adopted' the nuisance: *Sedleigh-Denfield v O'Callaghan* [1940] AC 880, [1940] 3 All ER 349, HL; but cf *Regal v African Superslate (Pty) Ltd* 1961 (4) SA 727 (no liability if practical method of abating the nuisance exists).

6 *Williams v Jersey* (1841) Cr & Ph 91, 10 LJ Ch 149.

7 *Volenti non fit injuria* and contributory negligence will rarely afford defences in private nuisance although a claimant will of course be under the normal duty to mitigate his loss.

8 *Rigby v Chief Constable of Northamptonshire* [1985] 2 All ER 985, [1985] 1 WLR 1242 (police firing CS gas canister into building to flush out armed intruder, causing a fire in the building).

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279. Persons entitled to sue.

An owner in fee simple¹ or a lessee² whose riparian rights are infringed or a reversioner if his reversion will be injured³ (but not, it seems, a mere licensee⁴) may bring a claim in private nuisance or trespass⁵ for an injunction and damages; and so may a person entitled to a profit à prendre⁶ or easement whose rights are prejudiced by pollution. A person who has no rights in the affected waters but is injured as a result of the pollution may be able to succeed in public nuisance⁷, under the rule in *Rylands v Fletcher* or under statute⁸ if any of these causes are applicable to the circumstances of the case⁹. Otherwise, he will have to prove that the defendant was negligent¹⁰. Where there has been an infringement of statutory provisions or a public nuisance the proper person to sue for the protection of the public is either the local authority or the Attorney-General¹¹.

1 *Wood v Waud* (1849) 3 Exch 748.

2 *Wood v High and Low Harrogate Improvement Comrs* (1874) 22 WR 763; *Stockport Waterworks Co v Potter* (1864) 3 H & C 300.

3 *Jones v Llanrwst UDC* [1911] 1 Ch 393; *Jones v Chappell* (1875) LR 20 Eq 539.

4 *Hunter v Canary Wharf Ltd*, *Hunter v London Docklands Development Corp* [1997] AC 655, [1997] 2 All ER 426, HL; and see *East Lothian Angling Association v Haddington Town Council* 1980 SLT 213.

5 See PARAS 274, 277; and **NUISANCE**.

6 *Fitzgerald v Firbank* [1897] 2 Ch 96, CA. An association of persons individually interested, as riparian owners or holders of fishing rights, in the protection of waters from pollution may support claims brought by individual members to restrain the pollution of waters to which interests of members relate: see *Martell v Consett Iron Co Ltd* [1955] Ch 363 at 416-417, [1955] 1 All ER 481 at 499, CA (such a claim did not constitute the former crime or former tort of maintenance).

7 See PARA 276 the text and note 2.

8 ie under the Environmental Protection Act 1990 s 73(6): see PARA 660.

9 See PARA 275 the text and note 4.

10 See PARA 277.

11 See PARA 276; and **NUISANCE** vol 78 (2010) PARA 189.

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280. Conduct of claimant.

It is no defence to a claim for pollution infringing riparian rights that the claimant is not using the water as riparian owner, or that he had acquired the riparian land knowing that the water was polluted¹.

¹ *Crossley & Sons Ltd v Lightowler* (1867) 2 Ch App 478, where the water being used by the claimants did not come from the riparian land, but an injunction was granted. It was held that it was immaterial that a consequence of the injunction might be to purify the water at a lower point on another person's land from which the claimants had a piped water supply by agreement.

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281. Degree of contribution to pollution.

If water is polluted from several separately owned sources, it is no defence that the pollution caused by the defendant is only a small part of the whole¹. The defendant will be liable even if his discharge is innocuous in itself but becomes a pollutant when combined with other effluents in the water².

1 See PARA 270. There must be a 'material' contribution but cf *Blair and Sumner v Deakin* (1887) 57 LT 522 (an 'infinitesimal' and 'inappreciable' contribution to the total pollution will not afford him a defence). Even though the causes of action against the individual contributors to the nuisance are distinct, it should usually prove possible for them to be joined as parties to one claim on the ground that the complaints against the various defendants raise a common question of law or fact. See also *Wood v Waud* (1849) 3 Exch 748; *A-G v Birmingham Borough Council* (1858) 4 K & J 528 at 541.

2 *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1952] 1 All ER 1326 at 1333; affd without discussion of this point [1953] Ch 149, [1953] 1 All ER 179, CA.

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282. Public authorities and other persons acting under statutory powers.

A public authority is not as such immune from liability for private nuisance or infringement of riparian rights¹ or under the rule in *Rylands v Fletcher*² or for public nuisance³, unless statute absolves the authority from the liability⁴ or unless the wrong is the inevitable result of the exercise in good faith of statutory powers⁵, as statutory powers must, prima facie and subject to their terms, be exercised so as not to interfere with the rights of individuals⁶.

If the act that gives rise to pollution is an infringement of statutory provisions, as where the terms and conditions for discharging sewage under statutory authority⁷ are not observed, the infringement may be the subject of proceedings by the Attorney General, and in such proceedings it is unnecessary for him to prove damage⁸. If liability in tort for pollution has been the subject of proceedings against a public authority and judgment has established it, a successor of the authority does not inherit the liability that was the subject of the proceedings, in the absence of statutory provision to that effect; a separate claim must be brought against the successor to establish the like liability on the part of the successor⁹. Any such liability of a former water authority was, however, transferred to its successor company holding a statutory appointment¹⁰ as a water or sewerage undertaker¹¹ on privatisation¹²; and any such liability of a water undertaker or sewerage undertaker will be transferred to any company holding a replacement appointment¹³.

1 *A-G v Hackney Local Board* (1875) LR 20 Eq 626, where neither nuisance nor the infringement of riparian rights was authorised; *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193, HL; *A-G v Lewes Corpn* [1911] 2 Ch 495, where the existence of a statutory power in the central authority to act on an individual's complaint of default by a local authority did not preclude a claim for damages and an injunction by the individual; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 163, 191, [1953] 1 All ER 179 at 186, 204, CA. Apart from statute, contract or prescription, a public authority has no more right than has an individual to throw a burden on its neighbour, eg by the discharge of sewage: *A-G v Acton Local Board* (1882) 22 ChD 221 at 231, citing *Metropolitan Board of Works v London and North Western Rly Co* (1881) 17 ChD 246 at 249, CA.

2 *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 405; *Haigh v Deudraeth RDC* [1945] 2 All ER 661; *Smeaton v Ilford Corpn* [1954] Ch 450 at 478, [1954] 1 All ER 923 at 927. Cf dicta in *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 176, [1953] 1 All ER 179 at 195, CA, per Sir Raymond Evershed MR, with dicta at 189 and at 202-203 per Denning LJ. As to the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 see PARA 276.

3 See the cases cited in PARA 275 note 2.

4 Ie either expressly or by clear implication: *Smeaton v Ilford Corpn* [1954] Ch 450 at 478, [1954] 1 All ER 923 at 936-937; *Allen v Gulf Oil Refining Ltd* [1981] AC 1001, [1981] 1 All ER 353, HL. As to the defence provided by the Planning Act 2008 s 158 (nuisance: statutory authority) see **TOWN AND COUNTRY PLANNING**.

5 See *Dell v Chesham UDC* [1921] 3 KB 427 at 434; *Provender Millers (Winchester) Ltd v Southampton County Council* [1940] Ch 131, [1939] 4 All ER 157, CA; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 176, 191, 193, [1953] 1 All ER 179 at 195, 204-205, CA; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 191. The burden of proving that the right of action has been negated by statute rests on the defendant: *Clowes v Staffordshire Potteries Waterworks Co* (1872) 8 Ch App 125 at 139; *Provender Millers (Winchester) Ltd v Southampton County Council* above.

6 See eg *A-G v Birmingham Borough Council* (1858) 4 K & J 528; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 193.

7 See eg the Water Industry Act 1991 s 117(5), (6); and PARA 1004 et seq.

8 *A-G v Cockermouth Local Board* (1874) LR 18 Eq 172; *A-G v Dorchester Corp*n (1905) 69 JP 363 at 368. However, the Attorney General is not entitled as of right to an injunction in such a case: see *A-G v Birmingham, Tame and Rea District Drainage Board* [1908] 2 Ch 551 at 562 (varied on another point [1912] AC 788, HL); *A-G v Harris* [1961] 1 QB 74, [1960] 3 All ER 207, CA.

9 *A-G v Birmingham, Tame and Rea District Drainage Board* (1881) 17 ChD 685, CA. As to the succession of local authorities to the pollution liabilities of their predecessors see eg *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 408-409.

10 Ie under what is now the Water Industry Act 1991: see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 et seq.

11 As to the meanings of 'water undertaker' and 'sewerage undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 4.

12 See **WATER AND WATERWAYS** vol 100 (2009) PARA 108.

13 See **WATER AND WATERWAYS** vol 100 (2009) PARA 141.

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283. Nonfeasance by public authority.

The question whether what is complained of is nonfeasance or misfeasance has now, it seems, no significance where the cause of action for pollution is nuisance, but it has not yet been decided that nonfeasance¹ is of no significance where the cause of action is negligence². If a water or sewerage undertaker's³ drains or sewers constitute a nuisance by reason only that they have ceased to deal adequately with the sewage of the undertaker's district, the undertaker is not liable by reason only of having failed to use statutory powers vested in it for enlarging the sewerage system, since such a claim would in effect be a claim to compel the undertaker to exercise statutory powers⁴. Such immunity from liability is, however, limited to situations where the defendants merely 'inherited' the drainage system, and does not apply to cases where they built the system, which has turned out to be inadequate, themselves⁵. Subject to the terms of the statute⁶ and apart from such other remedy as it may provide, the remedy to compel the exercise of statutory powers which are not discretionary is a mandatory order granted by way of judicial review⁷.

1 As to the lack of significance of nonfeasance as a defence generally see *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 188-189, [1953] 1 All ER 179 at 202, CA, per Denning LJ. However, the sense in which nonfeasance may be relevant to pollution is that of failing to perform some positive statutory duty. As to the nonfeasance/misfeasance distinction see also *Hanifa Dobson v Thames Utilities Ltd* [2007] EWHC 2021 (TCC), [2008] 2 All ER 362.

2 See *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 176, 188, [1953] 1 All ER 179 at 194-195, 202, CA.

3 As to the meanings of 'water undertaker' and 'sewerage undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 4.

4 *Dear v Thames Water* (1992) 33 Con LR 43 (Peter Bowsher J, QC, Official Referee); *Smeaton v Ilford Corp'n* [1954] Ch 450, [1954] 1 All ER 923; but cf *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 176, [1953] 1 All ER 179 at 194, CA, per Sir Raymond Evershed MR (explaining *Glossop v Heston and Isleworth Local Board* (1879) 12 ChD 102, CA, and *A-G v Dorking Union Guardians* (1882) 20 ChD 595, CA).

5 See PARA 1069.

6 See eg the Water Industry Act 1991 s 18; *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66, [2004] 2 AC 42, [2004] 1 All ER 135; and **WATER AND WATERWAYS** vol 100 (2009) PARA 163. See also *Brown v Dunstable Corp'n* [1899] 2 Ch 378 at 390, where the application should have been for an order under an enactment. Such an order might ultimately have been enforceable by a mandatory order.

7 As to mandatory orders generally as a remedy for the enforcement of a statutory duty see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 133 et seq.

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284. Pollution which is not actionable.

Unless the water forms part of a stream, a person may pollute water on his own land if the water is freed from pollution before it leaves his land¹. Moreover, since pollution is actionable only where there is an infringement of a proprietary right or a cause of action in tort exists², a claimant cannot maintain a claim for such an alleged infringement unless he can establish his right³.

A legal right to pollute water may be acquired by grant, prescription or statute⁴, but such a prescriptive right may be lost by abandonment⁵, and cannot be acquired where the right claimed would be in contravention of statute⁶, prejudicial to public health⁷ or a right to commit a public nuisance⁸.

1 *Elmhirst v Spencer* (1849) 2 Mac & G 45.

2 As to the causes of action for pollution see PARA 270.

3 See **WATER AND WATERWAYS** vol 100 (2009) PARA 81 et seq; *Stockport Waterworks Co v Potter* (1864) 3 H & C 300; *Ormerod v Todmorden Joint Stock Mill Co Ltd* (1883) 11 QBD 155, CA (no riparian ownership); *Dickinson v Shepley etc Sewerage Board* (1904) 68 JP 363, DC (easement); *Paine & Co Ltd v St Neots Gas and Coke Co* [1938] 4 All ER 592 (no title to grant easement); *Laing v Whaley* (1858) 3 H & N 675 (licensee of riparian owner; cf *Stockport Waterworks Co v Potter* above).

4 *Wood v Sutcliffe* (1851) 2 Sim NS 163 (prescription); *Carlyon v Lovering* (1857) 28 LTOS 356 (grant); *Hall v Lund* (1863) 1 H & C 676 (implied grant); *Crossley & Sons Ltd v Lightowler* (1867) 2 Ch App 478 (prescription). See also *McIntyre Bros v McGavin* [1893] AC 268, HL. See further **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 215. As to sewer connections and the limited right of selection of a sewerage undertaker see *Barratt Homes Ltd v DWR Cymru Cyfygedig (Welsh Water)* [2009] UKSC 13, [2009] All ER (D) 80 (Dec); and PARA 1042.

5 *Crossley & Sons Ltd v Lightowler* (1867) 2 Ch App 478.

6 *Traill v McAllister* (1890) 25 LR Ir 524; *Green v Matthews & Co* (1930) 46 TLR 206.

7 See *Blackburne v Somers* (1879) 5 LR Ir 1; and **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 215.

8 See PARA 276.

UPDATE

284 Pollution which is not actionable

NOTE 4--*Barratt Homes*, cited, reported at [2010] PTSR 651.

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(ii) Remedies

285. Injunction to restrain pollution generally.

A perpetual injunction¹ is the proper remedy for infringement of a proprietary right to a flow of pure water², and may, it seems, be granted even though no actual damage is established³. Although the court will not necessarily interfere by injunction in every case of nuisance⁴, it will grant an injunction to restrain a serious nuisance, but not a trifling and temporary one⁵. An injunction is an appropriate remedy where there is irreparable⁶ or substantial damage or where there is insistence on continuing the pollution⁷. In deciding whether to grant an immediate injunction to restrain pollution the court has regard to the balance of convenience, and may suspend the operation of the injunction⁸, particularly where the defendant is a public authority and the consequence of the injunction might be to put upon the authority a burden of doing something impossible or which could not be enforced⁹. It is, however, no answer to a claim for an injunction that a greater nuisance may be caused elsewhere by granting it¹⁰, or that many members of the public may be inconvenienced by granting it¹¹.

Injunctions may be granted quia timet¹², but prospective injury does not give rise to a right to the grant of an injunction to restrain pollution¹³ unless imminent danger is established¹⁴.

Delay, or more cogently acquiescence, may be a ground for resisting the grant of an injunction¹⁵, but reliance on the assurance of a public authority that pollution is to be remedied by further works will justify delay in taking action¹⁶, as also may reliance merely on a statutory duty being so fulfilled as not to cause a nuisance¹⁷.

An injunction restraining pollution may be discharged if no damage is being done¹⁸ or if the pollution has been remedied by further works¹⁹. The remedy for breach of an injunction is to bring contempt proceedings²⁰.

1 As to interim injunctions see **CIVIL PROCEDURE** vol 11 (2009) PARAS 316, 383 et seq.

2 *A-G v Birmingham Borough Council* (1858) 4 K & J 528 at 543 (riparian rights and nuisance); *Clowes v Staffordshire Potteries Waterworks Co* (1872) 8 Ch App 125 at 143 (avoidance of a series of accidents); *Pennington v Brinsop Hall Coal Co* (1877) 5 ChD 769 at 773-774 (damages for pollution are compensation only for past injury; an injunction avoids successive subsequent actions); *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 411; *Stollmeyer v Trinidad Lake Petroleum Co Ltd* [1918] AC 485, PC; *Stollmeyer v Petroleum Development Co Ltd* [1918] AC 498n, PC; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 181, [1953] 1 All ER 179 at 197, CA, per Sir Raymond Evershed MR (prima facie right to an injunction). As to the grant of an injunction where the violation of a common law right is established see generally **CIVIL PROCEDURE** vol 11 (2009) PARA 357.

3 *Clowes v Staffordshire Potteries Waterworks Co* (1872) 8 Ch App 125 at 142; *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 402-404, where this seems to follow from the statements that damage need not be established and that if the defendant had been a private individual there would not have been any defence to the action. In *Crossley & Sons Ltd v Lightowler* (1867) 2 Ch App 478 at 485-487 no damage appears to have been caused by the infringement of riparian rights as the water used was drawn lower down under an agreement, and was non-riparian water. An injunction to restrain continuous infringement of a statutory provision may be granted without proof of damage (*A-G v Cockermouth Local Board* (1874) LR 18 Eq 172) or where a statutory body acts in excess of its powers (*Oldaker v Hunt* (1855) 6 De GM & G 376).

4 The granting of an injunction is a discretionary remedy and thus, where there are special circumstances, a claimant may be left to his remedy in damages: *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 194, [1953] 1 All ER 179 at 205, CA, per Romer LJ.

5 *Taylor v Bennett* (1836) 7 C & P 329 (temporary nuisance); *Goldsmid v Tunbridge Wells Improvement Comrs* (1866) 1 Ch App 349 at 354-355; *A-G v Gee* (1870) LR 10 Eq 131 at 137. See generally **NUISANCE**. As to the phrasing of the injunction see *Lingwood v Stowmarket Co* (1865) LR 1 Eq 77.

6 See **CIVIL PROCEDURE**. 'Irreparable injury' is injury which, if not prevented by injunction, cannot afterwards be compensated for: *A-G v Hallett* (1847) 16 M & W 569.

7 *Goldsmid v Tunbridge Wells Improvement Comrs* (1866) 1 Ch App 349 (injury likely to increase so as to become serious and permanent); *A-G v Acton Local Board* (1882) 22 ChD 221 at 231 (no substantial damage, but the board insisted on continuing and increasing the pollution). See further **CIVIL PROCEDURE**. An injunction has been dissolved where no damage was shown: *Elmhirst v Spencer* (1849) 2 Mac & G 45.

8 *A-G v Colney Hatch Lunatic Asylum* (1868) 4 Ch App 146 (where the court granted an injunction but suspended it for three months to give the defendants time to abate the pollution); *A-G v Finchley Local Board* (1887) 3 TLR 356; *Stollmeyer v Petroleum Development Co Ltd* [1918] AC 498n, PC (a similar case, where the injunction was suspended for two years); *Stollmeyer v Trinidad Lake Petroleum Co Ltd* [1918] AC 485, PC (where the grant of the injunction was refused until the defendants had time to execute works to avoid the pollution). See also **CIVIL PROCEDURE**.

9 *Lillywhite v Trimmer* (1867) 36 LJ Ch 525; *A-G v Colney Hatch Lunatic Asylum* (1868) 4 Ch App 146; *A-G v Clerkenwell Vestry* [1891] 3 Ch 527 at 535; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 181-182, 192, 194, [1953] 1 All ER 179 at 198, 204-206, CA. As to injunctions concerning sewage disposal see PARA 286.

10 *A-G v Bradford Canal Proprietors* (1866) LR 2 Eq 71.

11 *A-G v Birmingham Borough Council* (1858) 4 K & J 528; *A-G v Colney Hatch Lunatic Asylum* (1868) 4 Ch App 146 at 155.

12 *Fletcher v Bealey* (1885) 28 ChD 688; and see **CIVIL PROCEDURE**.

13 *A-G v Birmingham Borough Council* (1858) 4 K & J 528; *A-G v Kingston-on-Thames Corpn* (1865) 6 New Rep 248.

14 *Fletcher v Bealey* (1885) 28 ChD 688; but cf *Hooper v Rogers* [1975] Ch 43, [1974] 3 All ER 417, CA.

15 See **CIVIL PROCEDURE**.

16 *A-G v Luton Local Board of Health* (1856) 27 LTOS 212; *A-G v Birmingham Borough Council* (1858) 4 K & J 528.

17 *A-G v Leeds Corpn* (1870) 5 Ch App 583.

18 See *Elmhirst v Spencer* (1849) 2 Mac & G 45. As to the dissolution of injunctions generally see **CIVIL PROCEDURE**.

19 See *A-G v Birmingham, Tame and Rea District Drainage Board* [1912] AC 788, HL, where the injunction was dissolved on appeal.

20 It is not necessary to show that the breach complained of has caused demonstrable harm: see *Whitham v Warnsford Trout Farm Ltd* [1991] Water Law 143.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/7. POLLUTION OF WATER/(1) POLLUTION AT COMMON LAW/ (ii) Remedies/286. Injunction to restrain pollution from sewers or sewage works.

286. Injunction to restrain pollution from sewers or sewage works.

Under the Water Resources Act 1991, sewerage undertakers¹ have consents set for their own discharges into controlled waters² and may be prosecuted if they breach them³. They are responsible for all discharges from their sewers or works, subject only to two defences: (1) that the discharge was not in contravention of consent; and (2) that the breach was caused by an illegal discharge to the sewer that they could not reasonably have been expected to prevent⁴. Where the cause of pollution is a discharge from the sewers or sewage works, the operation of an injunction granted to a claimant whose right is infringed may be suspended to permit remedial works to be made⁵. However the fact that by statute⁶ connections with the sewers may be made by householders, which the sewerage undertaker is unable to prevent, does not afford a ground for refusing an injunction against pollution by ultimate discharge from a sewer further on⁷. Where the claim is in nuisance and the wrong is caused by overloading of the sewer, attributable to connections that a sewerage undertaker cannot prevent, the nuisance is not caused by the sewerage undertaker and it is therefore not liable in nuisance⁸. If certain householders have prescriptive rights of drainage and of pollution, an injunction will not be granted to restrain their exercise of those rights⁹, which may therefore prevent an injunction being granted that would involve the closing of a sewer¹⁰. Similarly, an injunction to restrain the making of further connections to a sewer will not be granted where a sewerage undertaker is bound by statute to permit connections to be made¹¹, although an injunction may still be granted to restrain the sewerage undertaker from directing or authorising sewage to flow into the sewer¹².

1 As to the meaning of 'sewerage undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 4.

2 As to the meaning of 'controlled waters' see PARA 289.

3 See the Water Resources Act 1991 s 85; and PARA 300. However, the grant of a consent to discharge sewage effluent is not a defence in civil proceedings: see s 100; and PARA 290.

4 See the Water Resources Act 1991 s 87; and PARA 296. See also *National Rivers Authority v Yorkshire Water Services Ltd* [1995] 1 AC 444, [1995] 1 All ER 225, HL.

5 See PARA 282 the text and notes 8-9. As to the form of such an injunction see eg *Brocket v Luton Corpn* [1948] WN 352.

6 See the Water Industry Act 1991 s 106; and PARAS 1041-1042.

7 *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 409-410. As to sewage disposal generally see PARA 1069. It is thought that in such a case liability would arise under the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 (see PARA 275), subject to any statutory exemption: cf *Smeaton v Ilford Corpn* [1954] Ch 450 at 478, [1954] 1 All ER 923 at 937.

8 *Smeaton v Ilford Corpn* [1954] Ch 450 at 464-465, [1954] 1 All ER 923 at 928-929. See also the Water Industry Act 1991 s 98 (powers to requisition new sewers for domestic purposes); and PARA 1018. The local planning authority may refuse planning permission on the ground that the local sewage works are overburdened since that is a material consideration.

9 *Earl of Harrington v Derby Corpn* [1905] 1 Ch 205 at 220. However, an injunction may be granted where it will not interfere with such prescriptive rights: *Hobart v Southend-on-Sea Corpn* (1906) 75 LJB 305. Where there has been excessive pollution beyond that to which the prescriptive rights extend, an injunction may be

granted notwithstanding that it will deprive the wrongdoers of their prescriptive rights: *Blackburne v Somers* (1879) 5 LR Ir 1 at 18.

10 *Brown v Dunstable Corpn* [1899] 2 Ch 378 at 388.

11 *A-G v Acton Local Board* (1882) 22 ChD 221; *Ainley v Kirkheaton Local Board* (1891) 60 LJ Ch 734. Both these cases were applied in *Brown v Dunstable Corpn* [1899] 2 Ch 378 at 389, not following *Charles v Finchley Local Board* (1883) 23 ChD 767.

12 *A-G v Acton Local Board* (1882) 22 ChD 221; *Brown v Dunstable Corpn* [1899] 2 Ch 378 at 389, 391.

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287. Damages.

Damages are recoverable for any physical harm caused by pollution infringing riparian or prescriptive rights. The court either assesses the amount of the damages at the hearing, and gives judgment for them, or gives judgment for damages to be assessed¹. If a right has been so infringed but there has not been substantive damage, nominal damages may be awarded².

Damages may be awarded under statutory power³ in lieu of an injunction⁴, and may be awarded in addition to an injunction⁵. The cost of reinstating the land to its original state will be allowed unless this would be inappropriate in which case the award will reflect the diminution in the value of the property which resulted from the pollution⁶. Consequential losses⁷ that are not too remote will also be recoverable, and where pollution has continued for some time, it may be possible to recover a sum reflecting the use that the defendant has made of the claimant's waters for the disposal of his effluent on the 'way-leave principle'⁸.

The measure of damages for nuisance is discussed elsewhere in this work⁹. The measure of the damages to which an owner of fishing rights is entitled for pollution injurious to fish is the damage that is the natural and probable consequence of the wrongful acts causing the pollution¹⁰. He may also be able to obtain damages for any annoyance, inconvenience or discomfort caused by the defendant's wrong¹¹.

1 As to the assessment of damages see **CIVIL PROCEDURE; DAMAGES**. For an example see *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1952] 1 All ER 1326 at 1341; affd [1953] Ch 149, [1953] 1 All ER 179, CA.

2 *Nixon v Tynemouth Union Rural Sanitary Authority* (1888) 52 JP 504, DC.

3 Ie under the Supreme Court Act 1981 s 50: see **CIVIL PROCEDURE; DAMAGES; SPECIFIC PERFORMANCE** vol 44(1) (Reissue) PARA 959.

4 *Chapman, Morsons & Co v Auckland Union Guardians* (1889) 23 QBD 294, CA; *Warwick and Birmingham Canal Navigation Co v Burman* (1890) 63 LT 670.

5 *Wood v High and Low Harrogate Improvement Comrs* (1874) 22 WR 763; *A-G and Dommes v Basingstoke Corpn* (1876) 45 LJ Ch 726.

6 *Ward v Cannock Chase District Council* [1986] Ch 546, [1985] 3 All ER 537. See also *Burgess v Gwynedd River Authority* (1972) 24 P & CR 150.

7 Including loss of profits where these are a direct result of the pollution: *Dodd Properties (Kent) v Canterbury City Council* [1980] 1 All ER 928, [1980] 1 WLR 433, CA.

8 *Whitwham v Westminster Brymbo Coal & Coke Co* [1896] 2 Ch 538, CA. If this is to be done, the statement of case should include an allegation of trespass.

9 See **NUISANCE** vol 78 (2010) PARA 227 et seq.

10 *Marquis of Granby v Bakewell UDC* (1923) 87 JP 105.

11 *Bone v Seale* [1975] 1 All ER 787, [1975] 1 WLR 797, CA.

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(2) CONTROL OF POLLUTION UNDER DOMESTIC LEGISLATION

(i) Introduction

288. Legislation to prevent pollution.

The principal Act concerned with the control of pollution of the water environment is the Water Resources Act 1991, with subsequent amendments¹. Other legislation contains numerous enactments prohibiting or controlling pollution:

- 343 (1) caused by particular things or materials or derived from particular sources, such as the unauthorised or harmful deposit of waste², agricultural chemicals³, animal carcases⁴, anti-fouling paints⁵, cemeteries⁶, deposits at sea⁷, the manufacture of gas⁸, radioactive waste⁹, discharges of oil from land¹⁰, escapes from pipelines¹¹, and major industrial discharges that involve discharges to other environmental media apart from water¹²; or
- 344 (2) affecting particular places, such as the countryside¹³, fisheries¹⁴ and harbours¹⁵, or affecting the public water supply¹⁶.

The legislation directed to the abatement of public nuisances, including those which arise from pollution of water, is discussed elsewhere in this work¹⁷. Further matters concerning water quality are contained in European Union legislation¹⁸.

1 The Water Resources Act 1991 Pt III (ss 82-104) consolidated and updated legislation previously contained in the Water Act 1989, the Control of Pollution Act 1974, and, in turn, the Rivers (Prevention of Pollution) Acts 1951 to 1961, and has been amended by the Environment Act 1995, the Pollution Prevention and Control Act 1999 and the Water Act 2003. As to the relevant provisions of the 1991 Act see PARA 289 et seq. See also for the Water Supply (Water Fittings) Regulations 1999, SI 1999/1148 (made under the Water Industry Act 1991); and **WATER AND WATERWAYS** vol 100 (2009) PARA 367.

2 See the Environmental Protection Act 1990 s 33; and PARA 655.

3 See the Food and Environment Protection Act 1985 Pt III (ss 16-19); and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1036-1037, 1054-1057.

4 See the Animal Health Act 1981 s 35(3), (4)(a); and **ANIMALS** vol 2 (2008) PARA 1094.

5 See the Control on Dangerous Substances and Preparations Regulations 2006, SI 2006/3311; and PARA 338.

6 See the Cemeteries Clauses Act 1847 ss 20-22; and PARA 341.

7 See the Food and Environment Protection Act 1985 s 5(a); and PARA 525.

8 See the Public Health Act 1875 s 68; and PARA 340.

9 See the Radioactive Substances Act 1993; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1238 et seq.

10 See the Merchant Shipping Act 1995 s 131; and PARA 425.

11 See the Pipe-lines Act 1962 s 37; and **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 617.

- 12 See the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed); the Pollution Prevention and Control Act 1999; PARA 334; and PARA 159 et seq.
- 13 See the Countryside Act 1968 s 38; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 522 et seq.
- 14 See the Salmon and Freshwater Fisheries Act 1975 s 4; and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 917.
- 15 See the Merchant Shipping Act 1995 ss 135-136A; and PARAS 429, 430.
- 16 See the Water Industry Act 1991 s 72; and **WATER AND WATERWAYS** vol 100 (2009) PARA 369.
- 17 As to statutory nuisances see the Environmental Protection Act 1990 ss 79-84; and **NUISANCE** vol 78 (2010) PARAS 115, 155 et seq.
- 18 See PARA 23 et seq.

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289. Controlled waters.

The phrase 'controlled waters' is a generic phrase used to cover four specific categories of water which have a statutory definition. The generic phrase or one of the specific categories is used in the Water Resources Act 1991 as appropriate to the context. The principal pollution offence relates to discharges into controlled waters¹. There are four classes of controlled waters for the purposes of pollution control²:

- 345 (1) relevant territorial waters, which are the waters which extend seaward for three miles³ from the baselines⁴ from which the breadth of the territorial sea adjacent to England and Wales is measured⁵;
- 346 (2) coastal waters, namely any waters which are within the area which extends landwards from those baselines as far as the limit of the highest tide or, in the case of the waters⁶ of any relevant river or watercourse⁷, the freshwater limit⁸ of the river or watercourse, together with the waters of any enclosed dock which adjoins waters within that area⁹;
- 347 (3) inland freshwaters, that is to say, the waters of any relevant lake or pond¹⁰ or of so much of any relevant river or watercourse as is above the freshwater limit¹¹;
- 348 (4) ground waters, that is to say, any waters contained in underground strata¹².

Controlled waters include the bed of the river¹³. Both dry watercourses and waters that have overflowed from a stream are still controlled waters¹⁴.

1 See the Water Resources Act 1991 s 85; and PARA 291.

2 See the Water Resources Act 1991 s 104(1).

3 This limit adopts the limit applicable under the Control of Pollution Act 1974 (see s 30A which applies to Scotland only), as opposed to the 12-mile limit under the Territorial Sea Act 1987. However, the Secretary of State or, in so far as this function is exercisable in relation to Wales, the Welsh Ministers may by order provide that any area of the territorial sea adjacent to England and Wales is to be treated as if it were any area of relevant territorial waters for these purposes, and for the purposes of any other enactment in which any expression is defined by reference to the meanings given by the Water Resources Act 1991 s 104: s 104(4)(a); and see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. An order under the Water Resources Act 1991 s 104 may contain such supplemental, consequential and transitional provision as the Secretary of State or the Welsh Ministers consider appropriate and may make different provision for different cases, including different provision in relation to different persons, circumstances or localities: s 104(5). The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 104(6). At the date at which this title states the law, no order had been made under s 104(4)(a) and none had effect as if so made. 'Miles' means international nautical miles of 1,852 metres: s 104(3). As to the meaning of 'enactment' see **WATER AND WATERWAYS** vol 100 (2009) PARA 14 note 31. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 The baselines from which the breadth of that territorial sea is to be measured are those established by Her Majesty by Order in Council: Territorial Sea Act 1987 s 1(1)(b). See the Territorial Waters Order in Council 1964 (25 September 1964) (amended by SI 1998/2564); and the Territorial Waters (Amendment) Order in Council 1979 (23 May 1979), neither of which was issued in the statutory instruments series, and both of which have effect for all purposes as if they were orders made by virtue of the Territorial Sea Act 1987 s 1(1)(b): s 1(4). See also the Territorial Sea (Limits) Order 1989, SI 1989/482, which establishes the seaward limit of the territorial sea adjacent to the United Kingdom in the Straits of Dover and in the vicinity of the Isle of Man.

5 Water Resources Act 1991 s 104(1)(a).

6 For these purposes, any reference to the waters of any lake or pond or of any river or watercourse includes a reference to the bottom, channel or bed of any lake, pond, river or, as the case may be, watercourse which is for the time being dry: Water Resources Act 1991 s 104(2). As to the meaning of 'watercourse' see **WATER AND WATERWAYS** vol 100 (2009) PARA 187 note 2.

7 For these purposes, 'relevant river or watercourse' means any river or watercourse, including an underground river or watercourse and an artificial river or watercourse, which is neither a public sewer nor a sewer or drain which drains into a public sewer: Water Resources Act 1991 s 104(3). The fact that a man-made ditch is virtually dry is irrelevant to its definition as a 'watercourse' for these purposes: see *Environment Agency v Brock plc* [1998] Env LR 607, DC. The Secretary of State or the Welsh Ministers may by order provide that a watercourse of a description specified in the order is to be treated for these purposes, and for the purposes of any other enactment in which any expression is defined by reference to the meanings given by the Water Resources Act 1991 s 104, as if it were not a relevant river or watercourse: s 104(4)(d). As to the exercise of this power see further note 3. At the date at which this title states the law, no order had been made under s 104(4)(d) and none had effect as if so made. As to the meanings of 'public sewer', 'sewer' and 'drain' see PARAS 998, 1000.

8 For these purposes, 'freshwater limit', in relation to any river or watercourse, means the place for the time being shown as the freshwater limit of that river or watercourse in the latest map deposited for that river or watercourse under the Water Resources Act 1991 s 192: s 104(3). The Secretary of State or, in relation to Wales, the Welsh Ministers must deposit maps with the Environment Agency showing what appear to him or to them to be the freshwater limits of every relevant river or watercourse (within the meaning of s 104) and may from time to time, if he or the Ministers consider it appropriate to do so by reason of what appears to him or to them to be the freshwater limit of any river or watercourse, deposit a map showing a revised limit for that river or watercourse: s 192(1), (3) (amended by the Environment Act 1995 Sch 22 para 128). It is the Agency's duty to keep any maps so deposited with it available, at all reasonable times, for inspection by the public free of charge: Water Resources Act 1991 s 192(2) (as so amended). As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

9 Water Resources Act 1991 s 104(1)(b). Section 104(1) has effect for the purpose of giving effect to European Parliament and EC Council Directive 2006/113 (OJ L376, 27.12.2006, p 14) (see PARA 27) as if 'controlled waters' included all waters which are coastal or brackish waters for the purposes of that Directive: Surface Waters (Shellfish) (Classification) Regulations 1997, SI 1997/1332, reg 6(2) (amended by SI 2009/1266).

10 For these purposes, 'relevant lake or pond' means any lake or pond which, whether it is natural or artificial or above or below ground, discharges into a relevant river or watercourse or into another lake or pond which is itself a relevant lake or pond; and 'lake or pond' includes a reservoir of any description: Water Resources Act 1991 104(3). The Secretary of State or, in relation to Wales, the Welsh Ministers for Wales may by order provide that any lake or pond which does not discharge into a relevant river or watercourse or into a relevant lake or pond is to be treated for these purposes, and for the purposes of any other enactment in which any expression is defined by reference to the meanings given by s 104, as a relevant lake or pond, and that a lake or pond which does so discharge and is of a description specified in the order is to be treated for those purposes as if it were not a relevant lake or pond: s 104(4)(b), (c). As to the exercise of this power see further note 3. At the date at which this title states the law, no such order had been made, but, by virtue of the Water Consolidation (Consequential Provisions) Act 1991 Sch 2 para 1(1), (2), the Controlled Waters (Lakes and Ponds) Order 1989, SI 1989/1149, has effect as if so made. A reservoir which does not discharge into a relevant river or watercourse, or into a relevant lake or pond, and which does not contain water treated with a view to complying with the Water Supply (Water Quality) Regulations 1989, SI 1989/1147, reg 23 (revoked and replaced: see now the Water Supply (Water Quality) Regulations 2000, SI 2000/3184, reg 26; the Water Supply (Water Quality) Regulations 2001, SI 2001/3911, reg 26; and **WATER AND WATERWAYS** vol 100 (2009) PARA 382), is treated for these purposes as a relevant lake or pond: Controlled Waters (Lakes and Ponds) Order 1989, SI 1989/1149, art 2.

11 Water Resources Act 1991 s 104(1)(c). Section 104(1)(c) is modified as follows: (1) it has effect as if 'inland freshwaters' included all waters which need to be classified under the Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996, SI 1996/3001 (see PARA 330) to give effect to EC Council Directive 75/440 (OJ L194, 25.07.1975, p 26) (repealed by European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1)) (see PARA 23) in England and Wales (see the Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996, SI 1996/3001, reg 7(2)); (2) it has effect for the purpose of giving effect to European Parliament and EC Council Directive 2006/44 (OJ L264, 25.9.2006, p 20) (see PARA 26) as if 'inland freshwaters' included all waters which are fresh waters for the purposes of that Directive (Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331, reg 6(2) (amended by SI 2009/1264)); (3) it has effect in relation to England (a) for the purposes of the Water Resources Act 1991 Pt III Ch I (ss 82-84) (classification of quality of waters) (see PARA 330 et seq) as if 'inland freshwaters' included any lake or pond (other than a relevant lake or pond) which needs to be classified in order to give effect to EC Council Directive 76/160 (OJ L31, 05.02.76, p 01) (repealed and replaced from 31 December 2014 by European Parliament and

EC Council Directive 2006/7 (OJ L64, 4.3.2006, p 37)) (see PARA 29); (b) for all other purposes, as if 'inland freshwaters' included any such lake or pond which has been so classified under the Water Resources Act 1991 Pt III Ch I (Bathing Waters (Classification) (England) Regulations 2003, SI 2003/1238, reg 2(1) (revoked by SI 2008/1097 as from 24 March 2015)).

12 Water Resources Act 1991 s 104(1)(d). As to the meaning of 'underground strata' see **WATER AND WATERWAYS** vol 100 (2009) PARA 187 note 5.

13 See the Water Resources Act 1991 s 104(2); and note 6. See also *R v Dovermoss Ltd* (1995) 159 JP 448, [1995] 11 LS Gaz R 37, CA, where the defendant was found not guilty of an offence under the Water Resources Act 1991 s 85 by causing silt to be released when undertaking work to the river bed as the silt was part of the controlled waters and not matter which the defendant had caused to enter controlled waters.

14 See *R v Dovermoss Ltd* (1995) 159 JP 448, [1995] 11 LS Gaz R 37, CA.

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290. Civil liability.

Nothing in Part III of the Water Resources Act 1991¹ confers a right of action in any civil proceedings, other than proceedings for the recovery of a fine, in respect of any contravention² thereof or of any subordinate legislation, consent or other instrument made, given or issued thereunder³. Nor does anything in that Part derogate from any right of action or other remedy, whether civil or criminal, in proceedings issued otherwise than thereunder, or affect any restriction imposed by or under any other enactment⁴, whether public, local or private⁵.

1 le the Water Resources Act 1991 Pt III (ss 82-104): see PARAS 289, 291 et seq.

2 As to the meaning of 'contravention' see **WATER AND WATERWAYS** vol 100 (2009) PARA 20 note 5.

3 Water Resources Act 1991 s 100(a). Section 100 is subject to the provisions of the Interpretation Act 1978 s 18, which relates to offences under two or more laws (see **STATUTES** vol 44(1) (Reissue) PARAS 1363, 1445): Water Resources Act 1991 s 100. This has the effect that a consent of any nature given under Pt III and compliance with it cannot operate per se as a defence to a civil claim, and compliance with a consent does not of itself give rise to a basis for a defence of statutory authority. See also PARA 286.

4 As to the meaning of 'enactment' see **WATER AND WATERWAYS** vol 100 (2009) PARA 14 note 31.

5 Water Resources Act 1991 s 100(b), (c). See also note 3.

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(ii) Pollution Offences under the Water Resources Act 1991

291. Offences of polluting controlled waters.

A person contravenes the statutory provisions relating to pollution of controlled waters¹ if he causes² or knowingly permits³:

- 349 (1) any poisonous, noxious or polluting matter⁴ or any waste matter⁵ to enter any controlled waters⁶;
- 350 (2) any matter other than trade effluent⁷ or sewage effluent⁸ to enter controlled waters by being discharged from a drain or sewer⁹ in contravention¹⁰ of a statutory prohibition¹¹;
- 351 (3) any trade effluent or sewage effluent to be discharged into any controlled waters, or from land in England and Wales, through a pipe, into the sea outside the seaward limits of controlled waters¹²;
- 352 (4) any trade or sewage effluent to be discharged, in contravention of any statutory prohibition¹³, from a building or any fixed plant on to or into any land, or into any waters¹⁴ of a lake or pond which are not inland freshwaters¹⁵;
- 353 (5) any matter whatever to enter any inland freshwaters so as to tend, either directly or in combination with other matter which he or another person causes or permits to enter those waters, to impede the proper flow of the waters in a manner leading, or likely to lead, to a substantial aggravation of pollution due to other causes or of the consequences of such pollution¹⁶.

A person who contravenes these provisions, or the conditions of any consent given¹⁷ for these purposes, is guilty of an offence and liable to imprisonment, a fine or both¹⁸.

1 The Water Resources Act 1991 s 85, which sets out the five principal offences of polluting controlled waters. As to the meaning of 'controlled waters' see PARA 289. See also the Salmon and Freshwater Fisheries Act 1975 s 4 for the similar offence of causing or knowingly permitting the release of liquid or solid matter that causes the water to become poisonous or injurious to fish; and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 917.

On waste emissions being prosecuted as water pollution offences see *R (on the application of Thames Water Utilities Ltd) v Bromley Magistrates' Court* [2008] EWHC 1763 (Admin), [2009] 1 All ER 744, [2009] 1 WLR 1247 (escapes of waste water from a public sewerage system onto an area of land were 'controlled waste' within the meaning of the Environmental Protection Act 1990); and see PARA 623.

2 A person 'causes' a pollutant to enter controlled waters if he actively does something, with or without the occurrence of other factors, which produces a situation in which the polluting matter can escape, even though what he does is not the immediate cause of the pollution. Where a necessary condition of the actual escape which happens is also the act of a third party or a natural event, the justices or the court should consider whether that act or event is to be regarded as a normal fact of life or something extraordinary. If it is an ordinary occurrence, it will not negative the causal effect of the defendant's acts, even if it was not foreseeable that it would happen to that particular defendant, or take that particular form; however, if it can be regarded as something extraordinary, it is open to the justices or to the court to hold that the defendant has not caused the pollution: see *Environment Agency (formerly National Rivers Authority) v Empress Car Co (Abertillery) Ltd* [1999] 2 AC 22, sub nom *Empress Car Co (Abertillery) Ltd v National Rivers Authority* [1998] 1 All ER 481, HL. For earlier authorities see eg *Alphacell Ltd v Woodward* [1972] AC 824, [1972] 2 All ER 475, HL (a pollution occurred when pumps in a settling tank became blocked causing the tank to overflow into a stream. Lord Salmon took a robust common sense view of the meaning the word 'causing' which looks at the activities of the

defendant in broad terms, rather than looking more narrowly at the immediate circumstances leading to the pollution. The defendant could be said to cause the pollution if it would not have occurred but for the range of operations or activities (here the running of a factory necessitating the use of settling ponds) carried on by the defendants). See also *Southern Water Authority v Pegrum* [1989] Crim LR 442; *FJH Wrothwell Ltd v Yorkshire Water Authority* [1984] Crim LR 43 (appellant had poured a chemical down the drain, unaware that it passed straight into controlled waters; held that the appellant had caused the pollution despite the lack of knowledge); cf *Impress (Worcester) Ltd v Rees* [1971] 2 All ER 357, DC (where the court had accepted that where an authorised person deliberately opened a valve on a fuel tank it broke the chain of causation and exonerated the defendant); cf also *Wycharon District Council v National Rivers Authority* [1993] 2 All ER 440, [1993] 1 WLR 125, DC (where the court found the defendant had not caused a pollution where sewage escaped due to a blockage in the sewer; failure to deal with the escape expeditiously might amount to 'knowingly permitting' but the defendant had not been charged with that offence); *National Rivers Authority v Wright Engineering Co Ltd* [1994] 4 All ER 281. However the act of a third party will not always break the chain of causation, eg if a pollution occurs when an independent contractor delivers chemicals to a site which are accidentally spilled or effluent is discharged to a water company's sewage treatment works which then discharges that effluent into controlled waters causing a pollution, this does not necessarily enable the defendant to deny 'causing': see *CPC (UK) Ltd v National Rivers Authority* [1995] Env LR 131, CA where it was held that there did not have to be single cause of a pollution incident. The fact that another party might also be said to have caused the incident does not exonerate the defendant. See also *National Rivers Authority v Yorkshire Water Services Ltd* [1995] 1 AC 444, [1995] 1 All ER 225, HL (defendant received, involuntarily, into its sewage treatment works, a large quantity of iso-octonal from an unknown source which it was unable to treat and which was, in consequence, discharged into controlled waters; held that the defendant had caused the pollution but had a defence under what is now the Water Resources Act s 87(2) (see PARAS 294, 296)). Had the person responsible for introducing the iso-octonal into the sewers been discovered, he would also have been liable for causing the pollution). The question of foreseeability or negligence is not relevant: see *Welsh Water v Williams Motors (Cymdu) Ltd* (1988) Times, 5 December, per Lloyd J ('... the question is not what was foreseeable by the respondents or anyone else: the question is whether any act on the part of the defendant caused the pollution'). It is also possible for some natural event or act of God to break the chain of causation. It is possible for more than one person to be guilty of 'causing'; and it is a question of fact in each case whether a defendant has 'caused' polluting matter to enter controlled waters: *A-G's Reference (No 1 of 1994)* [1995] 2 All ER 1007, [1995] 1 WLR 599, CA. A company will be vicariously liable for the acts of its employees where those acts cause polluting matter to enter controlled waters: *National Rivers Authority v Alfred McAlpine Homes East Ltd* [1994] 4 All ER 286.

3 'Knowingly permitting' involves a failure to prevent a pollution, although there must be knowledge of the situation; see *Price v Cromack* [1975] 2 All ER 113, [1975] 1 WLR 988, DC; *Lockhart v National Coal Board* 1981 SLT 161. See also *Yorkshire West Riding Council v Holmfirth Urban Sanitary Authority* [1894] 2 QB 842, CA; *Rochford RDC v Port of London Authority* [1914] 2 KB 916, DC. A landowner who permits an operation on his land which gives rise to a risk of pollution contrary to the Water Resources Act 1991 s 85 must carry out a risk assessment and respond to what that assessment reveals: see *Express Ltd (t/a Express Dairies Distribution) v Environment Agency* [2004] EWHC 1710 (Admin), [2005] 1 WLR 223, [2004] All ER (D) 249 (Jul). See also *Environment Agency v Biffa Waste Services Ltd* [2006] EWHC 3495 (Admin), [2006] All ER (D) 155 (Dec), (2006) Times, 20 December.

4 See *R v Dovermoss Ltd* (1995) 159 JP 448, [1995] 11 LS Gaz R 37, CA, where it was stated that the word 'pollute' and its derivatives should be given their ordinary meaning as in the Oxford English Dictionary definition 'to make physically impure, foul or filthy: to dirty, stain, taint or befoul'. Poisonous matter can also be defined in the sense of being injurious to health or life, whether human, fish or other life forms: cf the Salmon and Freshwater Fisheries Act 1975 s 4; and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 917. See also *National Rivers Authority v Egger (UK) Ltd* [1992] Water Law 169, where it was held that the prosecutor does not need to show that the polluting matter caused actual harm to the receiving waters; *Express Ltd (t/a Express Dairies Distribution) v Environment Agency* [2004] EWHC 1710 (Admin), [2005] 1 WLR 223, [2004] All ER (D) 249 (Jul) (polluting matter does not need to be either poisonous or noxious; it is sufficient if it, eg stains or taints the water; in that case, the justices were entitled to reach the conclusion that cream released from a lorry into controlled waters had a potential for harm).

5 For these purposes, 'waste' in the term 'waste matter' includes (1) anything that is waste for the purposes of European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) on waste (see PARA 33), and that is not excluded from the scope of that Directive by art 2(1); (2) anything that is waste for the purposes of European Parliament and EC Council Directive 2006/21 (OJ L102 11.4.2006 p 15) on the management of waste from extractive industries and amending Directive 2004/35 (see PARA 45), and that is not excluded from the scope of Directive 2006/21 by art 2(2): Water Resources Act 1991 s 85(7) (added by SI 2007/3538; and substituted by SI 2009/1799).

6 Water Resources Act 1991 s 85(1) (amended by SI 2007/3538). A judge had correctly acquitted contractors of causing or knowingly permitting polluting matter to enter controlled waters contrary to the Water Resources Act 1991 s 85(1) where it had not been established that the contractors had responsibility for the pollution beyond a responsibility to carry out specific measures that they had been instructed to carry out: *Environment Agency v Biffa Waste Services Ltd* [2006] EWHC 1102 (Admin), [2006] All ER (D) 355 (Mar). Where heating oil

had escaped from an installation at a golf club, a prosecution for the strict liability offence of causing polluting water to enter controlled waters under the Water Resources Act 1991 s 85 could have been brought against the club, which was an unincorporated association or against individual members: *R v L* [2008] EWCA Crim 1970, [2009] 1 All ER 786, [2009] 1 Cr App Rep 230. For extensive consideration of important issues as to the sentencing of major water companies for criminal breaches of environmental protection, the relevant legislation here being the Water Resources Act 1991 s 85(1), see *R v Thames Water Utilities Ltd* [2010] EWCA Crim 202, [2010] All ER (D) 222 (Feb) (the defendant which ran sewage treatment works accepted responsibility for the pollution, cooperated in the relevant investigation, pleaded guilty and pledged funds to restore the river affected but later successfully appealed maintaining that the fine was manifestly excessive submitting that insufficient account had been taken of the amount pledged in reparation, there was too high a starting point and too much weight had been given to previous convictions).

7 As to the meaning of 'trade effluent' see **WATER AND WATERWAYS** vol 100 (2009) PARA 304 note 5.

8 As to the meaning of 'sewage effluent' see **WATER AND WATERWAYS** vol 100 (2009) PARA 304 note 5.

9 As to the meanings of 'drain' and 'sewer' see PARA 998.

10 As to the meaning of 'contravention' see **WATER AND WATERWAYS** vol 100 (2009) PARA 20 note 5.

11 Water Resources Act 1991 s 85(2). The prohibition referred to is a prohibition imposed under s 86 (see PARA 292): s 85(2).

12 Water Resources Act 1991 s 85(3). This provision permits a prosecution to be brought even though the pipe discharges into the sea at a point beyond the boundary of controlled waters as defined by s 104.

13 It is imposed under the Water Resources Act 1991 s 86: see PARA 292.

14 As to the meaning of 'waters' for these purposes see PARA 289 note 6.

15 Water Resources Act 1991 s 85(4). As to the meaning of 'inland freshwaters' see PARA 289 at head (3) in the text.

16 Water Resources Act 1991 s 85(5).

17 It is under the Water Resources Act 1991 Pt III Ch II (ss 85-91): see PARA 292 et seq.

18 Water Resources Act 1991 s 85(6). Such a person is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £20,000, or to both, and on conviction on indictment to a term of imprisonment not exceeding two years or a fine, or to both: see s 85(6). Notwithstanding the Magistrates' Courts Act 1980 s 127 (time limit for summary proceedings), a magistrates' court may try any summary offence under the Water Resources Act 1991 Pt III (ss 82-104) (see PARAS 289-290, 292 et seq), or under any subordinate legislation made thereunder, if the information is laid not more than 12 months after the commission of the offence: s 101.

As to the factors to be taken into account when determining the appropriate level of fine see *R v Milford Haven Port Authority* [2000] 2 Cr App Rep (S) 423, [2000] All ER (D) 352, CA.

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292. Prohibition of certain discharges by notice or regulations.

A discharge of any effluent¹ or other matter is in contravention² of a prohibition imposed on any person³:

- 354 (1) if the Environment Agency⁴ has given him a notice⁵ prohibiting him from making the discharge or from continuing it, or, where it has given such a notice prohibiting the discharge unless specific conditions are met, if those conditions are not observed⁶;
- 355 (2) if the effluent or matter discharged contains a prescribed substance⁷ or a prescribed concentration of such a substance, or if it derives from a prescribed process⁸ or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts⁹.

A notice given for the purposes of head (1) above does not expire until the time specified in it¹⁰, which must not be before the end of the period of three months beginning with the day on which it is given, except in a case where the Agency is satisfied that there is an emergency which requires the prohibition in question to come into force at such time before the end of that period as may be specified in the notice¹¹. Where, in the case of such a notice as would otherwise expire at a time at or after the end of that period of three months, an application is made before that time for a consent¹² in respect of the discharge to which the notice relates, that notice is deemed not to expire until the result of the application becomes final:

- 356 (a) on the grant or withdrawal of the application¹³;
- 357 (b) on the expiration, without the bringing of an appeal¹⁴ with respect to the decision on the application, of any period prescribed as the period within which any such appeal must be brought; or
- 358 (c) on the withdrawal or determination of any such appeal¹⁵.

1 As to the meaning of 'effluent' see **WATER AND WATERWAYS** vol 100 (2009) PARA 262 note 31.

2 Ie for the purposes of the Water Resources Act 1991 s 85: see PARA 291. As to the meaning of 'contravention' see **WATER AND WATERWAYS** vol 100 (2009) PARA 20 note 5.

3 Ie imposed under the Water Resources Act 1991 s 86: see the text and notes 4-15.

4 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

5 As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22. Nothing in this provision authorises the giving of a notice for these purposes in respect of discharges from a vessel: Water Resources Act 1991 s 86(3). As to the meaning of 'vessel' see **WATER AND WATERWAYS** vol 100 (2009) PARA 224 note 2.

6 Water Resources Act 1991 s 86(1) (s 86 amended by the Environment Act 1995 Sch 22 para 128). In determining when and how the Agency should exercise this power, it must take into account whether there has been or is likely to be any contravention of a code of good agricultural practice: see the Water Resources Act 1991 s 97(2); and PARA 320.

7 'Substance' includes micro-organisms and any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour; and 'micro-organism' includes any microscopic biological entity which is capable of replication: Water Resources Act 1991 s 221(1). The Water Industry Act 1991 contains identical definitions of these terms: see s 219(1). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 221(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. At the date at which this title states the law, no substances had been prescribed for these purposes; but see note 9.

8 At the date at which this title states the law, no processes had been prescribed for these purposes.

9 Water Resources Act 1991 s 86(2). This provision is intended to tie in with the prescribing of certain discharges as specified by regulations made pursuant to the integrated pollution control system under the Environmental Protection Act 1990 and the Pollution Prevention and Control Act 1999: see PARA 334. Nothing in any regulations made by virtue of the Water Resources Act 1991 s 86(2) may require any discharge from a vessel to be treated as a discharge in contravention of a prohibition imposed under s 86: s 86(3).

10 Water Resources Act 1991 s 86(4).

11 Water Resources Act 1991 s 86(5) (as amended: see note 6).

12 Ie under the Water Resources Act 1991 Pt III Ch II (ss 85-104): see PARA 300 et seq.

13 As to such applications see PARA 300 et seq.

14 As to such appeals see PARAS 311-312.

15 Water Resources Act 1991 s 86(6).

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293. Offences in connection with deposits and vegetation in inland freshwaters.

A person is guilty of an offence if, without the consent of the Environment Agency¹:

- 359 (1) he removes from any part of the bottom, channel or bed of any inland freshwaters² a deposit accumulated by reason of any dam, weir or sluice holding back the waters, and does so by causing the deposit to be carried away in suspension in the waters³;
- 360 (2) he causes or permits⁴ a substantial amount of vegetation to be cut or uprooted in any inland freshwaters, or to be cut or uprooted so near to any such waters that it falls into them and he fails to take all reasonable steps to remove the vegetation from those waters⁵.

A person guilty of any such offence is liable on summary conviction to a fine⁶.

¹ In giving a consent for these purposes, the Environment Agency may make the consent subject to such conditions as it considers appropriate: Water Resources Act 1991 s 90(5) (s 90 amended by the Environment Act 1995 Sch 22 para 128). As to applications for consent see PARA 300; and as to appeals in respect of such consents see PARAS 311-312. As to the Environment Agency see PARA 68 et seq; as to its pollution control functions generally see PARA 75; and as to its power to make charging schemes in respect of such consents see **WATER AND WATERWAYS** vol 100 (2009) PARA 273.

² As to the meaning of 'inland freshwaters' see PARA 289 at head (3) in the text. The Secretary of State or, so far as this function is exercisable in relation to Wales, the Welsh Ministers, may by regulations provide that any reference to inland freshwaters for these purposes is to be construed as including a reference to such coastal waters as may be prescribed: Water Resources Act 1991 s 90(6); and see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the meaning of 'coastal waters' see PARA 289 at head (2) in the text. At the date at which this title states the law, no such regulations had been made. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the power to make regulations generally see **WATER AND WATERWAYS** vol 100 (2009) PARA 21.

³ Water Resources Act 1991 s 90(1) (as amended: see note 1). Nothing in head (1) in the text applies to anything done in the exercise of any power conferred by or under any enactment relating to land drainage, flood prevention or navigation: s 90(4). As to land drainage and flood prevention see **WATER AND WATERWAYS** vol 101 (2009) PARA 556 et seq; and as to navigation see **WATER AND WATERWAYS** vol 101 (2009) PARA 688 et seq.

⁴ As to the meaning of 'cause or permit' see PARA 291; but note that there is no qualification for these purposes that the permitting must be 'knowingly'.

⁵ Water Resources Act 1991 s 90(2) (as amended: see note 1).

⁶ Water Resources Act 1991 s 90(3). The fine is a fine not exceeding level 4 on the standard scale. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142; and as to the time limit for summary proceedings see PARA 291 note 18.

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294. Defence to principal offences in respect of authorised discharges.

A person is not guilty of any of the principal offences relating to water pollution¹ in respect of the entry of any matter into any waters² or any discharge if the entry occurs or the discharge is made under and in accordance with³, or as a result of any act or omission under and in accordance with:

- 361 (1) a consent given under the relevant statutory provisions⁴;
- 362 (2) an authorisation for a prescribed⁵ process designated for central control⁶;
- 363 (3) a relevant permit⁷;
- 364 (4) a licence granted under the provisions relating to dumping at sea⁸;
- 365 (5) the provisions relating to discharges for works purposes⁹;
- 366 (6) any local statutory provision¹⁰ or statutory order¹¹ which expressly confers power to discharge effluent¹² into the water¹³; or
- 367 (7) any prescribed enactment¹⁴.

1 Ie an offence under the Water Resources Act 1991 s 85: see PARA 291.

2 As to the meaning of 'waters' see PARA 289 note 6.

3 The significance of the phrase 'under and in accordance with' was relevant to the case of *National Rivers Authority v Yorkshire Water Services Ltd* [1995] 1 AC 444, [1995] 1 All ER 225, HL, which concerned a discharge of a chemical, iso-octanol, by the defendant from its sewage treatment works into controlled waters. The chemical had been unlawfully put into a trade sewer and reached the works by gravity. The defendant had been unable to treat the chemical; held that the defendants had caused the polluting matter to enter controlled waters and that the discharge was 'under' a consent. However, a sewerage undertaker has a statutory defence to an offence of causing polluting matter to enter controlled waters where that discharge contravenes the conditions of a consent, but has resulted from the unauthorised discharge into the works by a third party which the consent holder could not prevent. The House of Lords was satisfied that the conditions of the statutory defence had been met and that the defendant had an absolute defence. This still leaves open the question of what would be the position if, in similar circumstances, a discharger could not establish the statutory defence. Where a consent, by conditions, permits chemicals A, B and C to be present, but not chemical D, does this render the discharger liable to prosecution because the effluent contains D, or does the fact that the Agency did not impose a condition as to the extent of chemical D that may be present allow the chemical to be present in the effluent so that the discharge is then 'in accordance with' the consent? This potential difficulty is often resolved in practice by the inclusion of a catch all condition in discharge consents prohibiting the discharge of matter other than that specifically consented to which will be harmful to the receiving water environment.

4 Ie a consent given under the Water Resources Act 1991 Pt II Ch III (ss 85-91): see PARA 299 et seq. As to applications for such consents see PARA 300 et seq; and as to charging schemes in respect of such consents see **WATER AND WATERWAYS** vol 100 (2009) PARA 273.

5 'Prescribed' means prescribed by regulations made by the Secretary of State: see the Water Resources Act 1991 s 221(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

6 Ie an authorisation under the integrated pollution control provision of the Environmental Protection Act 1991 Pt I (ss 1-28) (prospectively repealed): see PARAS 334, 159 et seq.

7 Ie a permit granted under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 662 et seq), except in so far as it authorises a Part B activity within the meaning of the 2007 Regulations (see PARA 663 note 1).

8 le a licence under the Food and Environment Protection Act 1985 Pt II (ss 5-15): see **PARA 525 et seq.**

9 le the Water Resources Act 1991 s 163 or the Water Industry Act 1991 s 165: see **WATER AND WATERWAYS** vol 101 (2009) **PARA 466.**

10 As to the meaning of 'local statutory provision' see **WATER AND WATERWAYS** vol 100 (2009) **PARA 14** note 24.

11 For these purposes, 'statutory order' means (1) any order under the Water Resources Act 1991 s 168 or under the Water Industry Act 1991 s 167 (compulsory works orders) (see **WATER AND WATERWAYS** vol 101 (2009) **PARA 455 et seq**); or (2) any order, byelaw, scheme or award made under any other enactment, including an order or scheme confirmed by parliament or brought into operation in accordance with special parliamentary procedure: Water Resources Act 1991 s 88(4). As to the meaning of 'enactment' see **WATER AND WATERWAYS** vol 100 (2009) **PARA 14** note 31.

12 As to the meaning of 'effluent' see **WATER AND WATERWAYS** vol 100 (2009) **PARA 262** note 31.

13 See eg the Channel Tunnel Rail Link Act 1996 s 2, Sch 2 para 9. However, this authorisation does not permit anything prohibited by the Water Resources Act 1991 s 85(1)-(3) (offences of polluting controlled waters) (see **PARA 291**): Channel Tunnel Rail Link Act 1996 Sch 2 para 9(6).

14 Water Resources Act 1991 s 88(1) (amended by SI 2000/1973; and SI 2007/3538). As from a day to be appointed head (2) in the text is removed: Water Resources Act 1991 s 88(1) (prospectively amended by the Pollution Prevention and Control Act 1999 Sch 3). At the date at which this title states the law, no such day had been appointed; furthermore, no regulations had been made for these purposes, and none had effect as if so made. As to the making of regulations generally see **WATER AND WATERWAYS** vol 100 (2009) **PARA 21.**

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295. Other statutory defences to principal offences.

A person is not guilty of any of the principal offences relating to water pollution¹ in respect of the entry of any matter into any waters² or any discharge if:

- 368 (1) the entry is caused or permitted³, or the discharge is made, in an emergency in order to avoid danger to life or health;
- 369 (2) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the entry or discharge and of its polluting effects; and
- 370 (3) particulars of the entry or discharge are furnished to the Environment Agency⁴ as soon as reasonably practicable after it occurs⁵.

Nor is a person guilty of such an offence:

- 371 (a) by reason of his causing or permitting any discharge of trade or sewage effluent⁶ from a vessel⁷; or
- 372 (b) by reason only of his permitting⁸ water from an abandoned mine⁹ or an abandoned part of a mine¹⁰ to enter controlled waters¹¹.

A person is not guilty of such an offence, otherwise than in respect of the entry of any poisonous, noxious or polluting matter into any controlled waters¹², by reason of his depositing the solid refuse of a mine or quarry¹³ on any land so that it falls or is carried into inland freshwaters¹⁴ if he deposits the refuse on the land with the consent of the Agency, no other site for the deposit is reasonably practicable and he takes all reasonably practicable steps to prevent the refuse from entering those inland freshwaters¹⁵.

A highway authority¹⁶ or other person entitled to keep open a drain¹⁷ is not guilty of any of the principal offences relating to water pollution by reason of its or his causing or permitting any discharge to be made from a drain kept open by virtue of that entitlement, unless the discharge is made in contravention¹⁸ of a statutory prohibition¹⁹.

1 le an offence under the Water Resources Act 1991 s 85: see PARA 291.

2 As to the meaning of 'waters' see PARA 289 note 6.

3 As to the meaning of 'causing' or 'permitting' see PARA 291.

4 As to the Environment Agency see PARA 68 et seq; as to its pollution control functions generally see PARA 75; and as to its power to make charging schemes in relation to consents under the Water Resources Act 1991 s 89(4)(a) see **WATER AND WATERWAYS** vol 100 (2009) PARA 273.

5 Water Resources Act 1991 s 89(1) (s 89 amended by the Environment Act 1995 Sch 22 para 128). Quaere whether the defence would be available if the person causing or permitting the entry or discharge was responsible for the circumstances that created the emergency in the first place, and where the emergency discharge was a foreseeable consequence of those circumstances, by analogy with *Perka v R* (1984) 13 DLR (4th) 1; see eg *Waste Incineration Services Ltd and Jacob v Dudley Metropolitan Borough Council* [1992] Env LR 29 ('emergency' in a similar context should be given its normal meaning of 'a state of things unexpectedly arising and urgently demanding attention'); and cf *Express Ltd (t/a Express Dairies Distribution) v Environment*

Agency [2003] EWHC 448 (Admin), [2003] 2 All ER 778, [2004] 1 WLR 579 (the court is entitled to focus upon the chain of causation, and ask whether the act which actually caused the entry was done in an emergency in order to save life).

6 As to the meaning of 'effluent' see **WATER AND WATERWAYS** vol 100 (2009) PARA 262 note 31. As to the meanings of 'trade effluent' and 'sewage effluent' see **WATER AND WATERWAYS** vol 100 (2009) PARA 262 note 31.

7 Water Resources Act 1991 s 89(2). As to the meaning of 'vessel' see **WATER AND WATERWAYS** vol 100 (2009) PARA 224 note 2.

8 It is submitted that the defence will not be available where it was 'caused'. See also *Lockhart v National Coal Board* 1981 SLT 161.

9 For these purposes, 'mine' means an excavation or system of excavations, including all such excavations to which a common system of ventilation is provided, made for the purpose of, or in connection with, the getting, wholly or substantially by means involving the employment of persons below ground, of minerals, whether in their natural state or in solution or suspension, or products of minerals: Mines and Quarries Act 1954 s 180(1) (substituted by SI 1993/1897; applied by the Water Resources Act 1991 s 89(6)).

10 As to what constitutes part of a mine see, by virtue of the Water Resources Act 1991 s 89(6), the Mines and Quarries Act 1954 s 180(3)-(6); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 5 note 14.

11 Water Resources Act 1991 s 89(3) (amended by the Environment Act 1995 s 60(1)). As to the meaning of 'controlled waters' see PARA 289. This defence does not, however, apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31 December 1999: Water Resources Act 1991 s 89(3A) (s 89(3A)-(3C) added by the Environment Act 1995 s 60(2)). In determining for these purposes whether a mine or part of a mine became abandoned before, on or after that date in a case where the mine or part has become abandoned on two or more occasions, of which at least one falls on or before that date, and at least one falls after that date, the mine or part is to be regarded as becoming abandoned after that date, but without prejudice to the operation of the defence in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date: Water Resources Act 1991 s 89(3B) (as so added). Where, immediately, before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part is not to be regarded for the purposes of s 89(3A), (3B) as constituting the abandonment of the mine, but only of that part of it: s 89(3C) (as so added).

12 It is an offence under the Water Resources Act 1991 s 85(1): see PARA 291 at head (1) in the text.

13 As to the meaning of 'quarry' see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 6 (the Water Resources Act 1991 s 89(6) applies the definition in the Mines and Quarries Act 1954 s 180(2) but that definition is now repealed).

14 As to the meaning of 'inland freshwaters' see PARA 289 at head (3) in the text.

15 Water Resources Act s 89(4) (as amended: see note 5). As to charges for consents see note 4.

16 As to highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 48 et seq.

17 It is by virtue of the Highways Act 1980 s 100: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 285. As to the meaning of 'drain' see PARA 998.

18 As to the meaning of 'contravention' see **WATER AND WATERWAYS** vol 100 (2009) PARA 20 note 5.

19 Water Resources Act 1991 s 89(5). The prohibition referred to is a prohibition imposed under s 86 (see PARA 292): s 89(5).

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296. Discharges into and from public sewers.

The following provisions apply for the purpose of determining liability where sewage effluent¹ is discharged:

- 373 (1) into any controlled waters, or from land in England and Wales, through a pipe, into the sea outside the seaward limits of controlled waters; or
- 374 (2) in contravention of any statutory prohibition, from a building or any fixed plant on to or into any land, or into any waters of a lake or pond which are not inland freshwaters²,

from any sewer³ or works (the 'discharging sewer') vested in a sewerage undertaker⁴ (the 'discharging undertaker')⁵. If the discharging undertaker did not cause, or knowingly permit⁶, the discharge it is nevertheless deemed to have caused it if matter included in the discharge was received by that undertaker into the discharging sewer or any other sewer or works vested in the undertaker and it was bound, either unconditionally or subject to conditions which were observed, to receive that matter into the sewer or works, unless the sewage effluent was, before being discharged from the discharging sewer, discharged through a main connection⁷ into that sewer or into any other sewer or works vested in the discharging undertaker by another sewerage undertaker (the 'sending undertaker') under an agreement having effect⁸ between the discharging undertaker and the sending undertaker⁹. Where the sewage effluent was discharged through such a main connection, the sending undertaker is deemed to have caused the discharge if, although it did not cause or knowingly permit the sewage effluent to be discharged into the discharging sewer, or into any other sewer or works of the discharging undertaker, matter included in the discharge was received by it into a sewer or works vested in it, and it was bound, either unconditionally or subject to conditions which were observed, to receive that matter into that sewer or works¹⁰.

A person is not guilty of any of the principal offences relating to water pollution¹¹ in respect of a discharge which he caused or permitted to be made into a sewer or works vested in a sewerage undertaker if the undertaker was bound to receive the discharge there either unconditionally or subject to conditions which were observed¹². Nor is a sewerage undertaker guilty of such an offence by reason only of the fact that a discharge from a sewer or works vested in the undertaker contravenes conditions of a consent relating to the discharge¹³ if:

- 375 (a) the contravention¹⁴ is attributable to a discharge which another person caused or permitted to be made into the sewer or works;
- 376 (b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and
- 377 (c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works¹⁵.

1 As to the meaning of 'sewage effluent' see **WATER AND WATERWAYS** vol 100 (2009) PARA 262 note 31.

2 le discharged as mentioned in the Water Resources Act 1991 s 85(3) or (4): see PARA 291 at heads (3)-(4) in the text.

- 3 As to the meaning of 'sewer' see PARA 998.
- 4 As to the meaning of 'sewerage undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 4.
- 5 Water Resources Act 1991 s 87(1) (substituted by the Competition and Service (Utilities) Act 1992 s 46(1)).
- 6 See PARA 291.
- 7 For these purposes, a 'main connection' means a connection between a sewer or disposal main and a sewer or disposal main, or a connection which allows a sewer or disposal main to discharge directly into a sewage disposal works: Water Industry Act 1991 s 110A(3) (added by the Competition and Service (Utilities) Act 1992 s 45; applied by the Water Resources Act 1991 s 87(4), itself added by the Competition and Service (Utilities) Act 1992 s 46(2)). As to the meaning of 'disposal main' see **WATER AND WATERWAYS** vol 101 (2009) PARA 462 note 5.
- 8 Ie under the Water Industry Act 1991 s 110A: see PARA 1023.
- 9 Water Resources Act 1991 s 87(1A), (1B) (s 87(1A)-(1C) added by the Competition and Service (Utilities) Act 1992 s 46(1)).
- 10 Water Resources Act 1991 s 87(1C) (as added: see note 9).
- 11 Ie an offence under the Water Resources Act 1991 s 85: see PARA 291.
- 12 Water Resources Act 1991 s 87(3).
- 13 As to discharge consents see PARA 299 et seq.
- 14 As to the meaning of 'contravention' see **WATER AND WATERWAYS** vol 100 (2009) PARA 20 note 5.
- 15 Water Resources Act 1991 s 87(2); and see *National Rivers Authority v Yorkshire Water Services Ltd* [1995] 1 AC 444, [1995] 2 All ER 225, HL.

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297. Restrictions on prosecution.

There are no restrictions as to who can initiate a prosecution for water pollution offences¹, and thus any individual can initiate prosecutions as well as the Environment Agency².

1 See the Water Resources Act 1991 s 216, which only restricts the ability to institute proceedings in relation to offences under Pt II Ch II (ss 24-72) (water resources) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 214 et seq) and related provisions; and **WATER AND WATERWAYS** vol 100 (2009) PARA 188. Cf the offence under the Salmon and Freshwater Fisheries Act 1975 s 4, which requires a person instituting proceedings to obtain a certificate from the Secretary of State or, in relation to Wales, from the Welsh Ministers before commencing proceedings: see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 917.

2 As to the Environment Agency see PARA 68 et seq; as to its pollution control functions generally see PARA 75; and as to its power to authorise persons to prosecute on its behalf see the Environment Act 1995 s 54; and PARA 73.

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298. Evidence.

The former statutory requirement as to the manner in which samples were to be obtained as evidence of an offence under the Water Resources Act 1991 has been repealed¹. The admissibility of evidence in connection with pollution offences under that Act is now governed by the relevant provisions of the Environment Act 1995, which are discussed elsewhere in this title².

¹ See the Environment Act 1995 ss 111(1)(c), (d), 120(4), Sch 24, repealing the Water Industry Act 1991 s 171(4), (5) and the Water Resources Act 1991 s 209(1), (2), (4), which previously restricted the admissibility in evidence of information obtained from samples. There was previously a requirement that any sample brought in evidence had to have been taken as a tripartite sample, with one part of the sample being given to the suspected polluter, one analysed and one retained for future analysis: see s 209(1) (repealed). The system was cumbersome and made bringing prosecutions procedurally difficult and was made worse by the decision in *National Rivers Authority v Harcross Timber and Building Supplies Ltd* (1992) 156 JP 743, [1993] Crim LR 221, DC, which established that the previous regime applied to all samples (eg river samples) relied on and not just to effluent samples and that this applied in civil as well as criminal proceedings. Thus the Environment Act 1995 s 111(1) represents a major departure from previous practice. In particular it enables automatic monitoring devices to be used, and increases the opportunity to secure convictions by the Environment Agency. The prosecution must still adduce evidence that proves the relevant offence beyond reasonable doubt, but the abolition of the formal sampling procedure enables all samples to be admitted as evidence in civil proceedings, which was put in doubt by the decision in *National Rivers Authority v Harcross Timber and Building Supplies Ltd* above.

² See the Environment Act 1995 s 111; and PARA 152.

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(iii) Authorisation of Discharges, Deposits and Other Activities

A. IN GENERAL

299. Introduction.

The Water Resources Act 1991 grants powers to the Environment Agency¹ to issue a range of consents² to those discharging into, or carrying out activities affecting, the water environment. Authorisations to discharge into the water environment are also permissible with consent from the relevant authority under other legislation or by virtue of a statutory order or an enactment³. The effect of the grant of consents is to give the holder of a consent immunity from prosecution for offences of water pollution, provided that he complies with the conditions of the consent⁴.

The Agency also has power under the Water Resources Act 1991, and a water undertaker⁵ has power under the Water Industry Act 1991, to make certain discharges of water for works purposes⁶.

¹ As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

² See the Water Resources Act 1991 ss 88-90; and PARAS 293-295; s 88(2), Sch 10; and PARA 300 et seq. Section 88 has effect in relation to cases in which consents for the purposes of s 88(1)(a) (see PARA 294 at head (1) in the text) are required by the Agency as if for s 88(2) there were substituted 'The Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 14(2), Sch 2 applies with respect to the making of applications by the Agency for consents under the Water Resources Act 1991 Pt III Ch II (ss 85-91) for the purposes of s 88(1)(a) and with respect to the giving, revocation and modification of such consents': see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 14(1); and see further PARA 305.

³ See the Water Resources Act 1991 s 88(1)(b)-(d), (f)-(g); and PARA 294.

⁴ See the Water Resources Act 1991 ss 88(1), 89(4), 90; and PARAS 293-295. No remediation notice under the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) (contaminated land) (see PARAS 337, 761 et seq) may require a person to do anything the effect of which would be to impede or prevent the making of a discharge in pursuance of such a consent: see s 78YB(4) (added by the Environment Act 1995 Sch 22 para 57); and PARA 769.

⁵ As to the meaning of 'water undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 4.

⁶ See the Water Resources Act 1991 s 163; the Water Industry Act 1991 s 165; and **WATER AND WATERWAYS** vol 101 (2009) PARA 466.

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B. AUTHORISATION OF DISCHARGES

300. Application for consent.

An application for a consent for any discharges into controlled waters¹ must be made to the Environment Agency² on a form provided for the purpose by the Agency and must be advertised by or on behalf of the applicant in such a manner as may be required by regulations³ made by the Secretary of State or, in relation to Wales, by the Welsh Ministers⁴. The applicant must provide to the Agency, either on, or together with, the application form such information⁵ as the Agency may reasonably require and such information as may be prescribed⁶ for the purpose by the Secretary of State or the Welsh Ministers⁷, but a failure to provide information does not⁸ invalidate an application⁹.

The Agency may give the applicant notice¹⁰ requiring him to provide it with such further information of any description specified in the notice as it may require for the purpose of determining the application¹¹.

An application made in accordance with these provisions which relates to proposed discharges at two or more places may be treated by the Agency as separate applications for consents for discharges at each of those places¹².

1 le an application for the purposes of the Water Resources Act 1991 s 88(1)(a): see PARA 294. As to the meaning of 'controlled waters' see PARA 289.

2 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

3 Such regulations may make provision enabling the Agency to direct or determine that any such advertising of an application may be dispensed with in any case if it appears to be appropriate to the Agency in that case for that advertising to be dispensed with: Water Resources Act 1991 s 88(2), Sch 10 para 1(2) (Sch 10 substituted by the Environment Act 1995 Sch 22 para 183).

4 Water Resources Act 1991 Sch 10 1(1) (as substituted: see note 3). In exercise of the power so conferred, the Secretary of State has made the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, which came into force on 31 December 1996: see reg 1(1). As to the prescribed manner of advertisement see PARA 301. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

5 As to the meaning of 'information' see **WATER AND WATERWAYS** vol 100 (2009) PARA 117 note 13.

6 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 221(1).

7 Water Resources Act 1991 Sch 10 para 1(3)(a), (b) (as substituted: see note 3).

8 le subject to the Water Resources Act 1991 Sch 10 para 3(3) (see PARA 302) and without prejudice to the effect, if any, of any other contravention of the requirements of Sch 10 in relation to an application under Sch 10 para 1: Sch 10 para 1(3) (as substituted: see note 3).

9 Water Resources Act 1991 Sch 10 para 1(3) (as substituted: see note 3).

10 As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

- 11 Water Resources Act 1991 Sch 10 para 1(4) (as substituted: see note 3).
- 12 Water Resources Act 1991 Sch 10 para 1(5) (as substituted: see note 3).

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301. Advertising and consultation in connection with discharge consent applications.

An application for a discharge consent¹ or the variation of a discharge consent must be advertised in accordance with the following provisions, which also apply to applications for consents for the deposit of solid refuse from mines or quarries on land near inland freshwaters² or consents³ for the removal of deposits or for the cutting or uprooting of vegetation in or near inland freshwaters⁴. Notice of the application⁵ must be published, within the period of 28 days beginning 14 days after the relevant date⁶, in one or more newspapers circulating in the locality in which the activities which are the subject matter of the application are proposed to be carried on and in the locality in which the controlled waters⁷ which may be affected by the proposed activities are situated, and also in the London Gazette⁸. The Environment Agency may, however, determine that an application is not required to be advertised if it appears to the Agency that it is appropriate to dispense with advertising it because any of the prescribed conditions⁹ is satisfied¹⁰.

The Environment Agency must give notice¹¹ of any application for a consent for any discharges into controlled waters¹², together with a copy of the application, to any persons who are prescribed¹³ or directed¹⁴ to be consulted and must do so within the specified period for notification¹⁵. Any representations made by the persons so consulted, or by any other person, within the period allowed¹⁶ must be considered by the Agency in determining the application¹⁷. The Secretary of State or, in relation to Wales, the Welsh Ministers may, however, by regulations exempt any class of application from these requirements, or exclude any class of information¹⁸ contained in applications from those requirements, in all cases or as respects specified classes only of persons to be consulted¹⁹.

1 For these purposes, 'discharge consent' has the same meaning as in the Water Resources Act 1991 s 91(8) (see PARA 310): Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 1(2).

2 I.e consents for the purposes of the Water Resources Act 1991 s 89(4)(a): see PARA 295.

3 I.e consents for the purposes of the Water Resources Act 1991 s 90(1) or (2): see PARA 293.

4 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 2(1).

5 The notice must (1) state the name of the applicant; (2) specify where the activities which are the subject matter of the application are proposed to be carried on; (3) describe briefly the nature of the proposed activities; (4) state where the register containing information about the application may be inspected, the times at which the register is open for inspection and that the register may be inspected free of charge; and (5) explain that any person may make representations in writing to the Environment Agency, specify when the period allowed for making representations ends and give the address of the Agency to which representations are to be sent: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 2(3). Nothing in heads (1)-(5) above, however, requires the disclosure of any information which is not to be included in a register by virtue of the Water Resources Act 1991 s 191A or 191B (exclusion from registers of information affecting national security and of certain confidential information) (see **WATER AND WATERWAYS** vol 100 (2009) PARAS 269-270): Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 2(4). As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

6 Subject to the following provisions, the relevant date in relation to an application is the date on which it is received by the Agency: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 3(2). In a case, however, where the Agency has notified the applicant within 14 days of the receipt of the application that it refuses to proceed with the application until information required by the Water Resources Act 1991 s 90A(4) (see PARA 293) or s 88(2), Sch 10 para 1(3) or (4) (see PARA 300) is provided, the relevant date is the date on which the Agency is finally provided with the information required: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 3(3). In a case where a matter falls to be determined under the Water Resources Act 1991 s 191A, the relevant date is the date on which the Secretary of State or, in relation to Wales, the Welsh Ministers notify the applicant of his or their determination; and in a case where a matter falls to be determined under s 191B, the relevant date is (1) if the Agency is treated by virtue of s 191B(3) as having determined that the information in question is commercially confidential, the date on which the period of 14 days mentioned in s 191B(3) expires; (2) if the Agency determines under s 191B(2) or (4) that the information in question is commercially confidential, the date on which the Agency notifies the applicant of its determination; (3) if the Agency determines under s 191B(2) or (4) that the information in question is not commercially confidential, the date (a) on which the period for appealing expires without an appeal having been made; or (b) on which the Secretary of State or the Welsh Ministers notify the applicant of his or their final determination of the appeal; or (c) on which the appeal is withdrawn: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 3(4), (5). Where the relevant date for these purposes in relation to an application is later than the date on which the application is received, a period of four months beginning with the relevant date is to be substituted for the period of four months specified in the Water Resources Act 1991 Sch 10 para 3(2) (see PARA 302): Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 3(6). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

7 As to the meaning of 'controlled waters' see PARA 289.

8 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, regs 2(2), 3(1).

9 The prescribed conditions are that (1) the Water Resources Act 1991 s 191A applies; or (2) the Agency considers that the activities which are the subject matter of the application are unlikely to have an appreciable effect on controlled waters in the locality in which those activities are proposed to be carried on; or (3) the application was made before 1 April 1997 and it related to discharges of a kind which the applicant, or a predecessor of his, was authorised to make by virtue of a consent to which the Environment Act 1995 s 120(2), Sch 23 para 21 applied (transitional provisions) but notice in accordance with Sch 23 para 21(2)(b)(ii) was not given by him or his predecessor: see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 4(a)-(c).

10 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 4. In any case where the Environment Agency so determines, the application is exempt from the requirements of the Water Resources Act 1991 s 90A(1)(b) or, as the case may be, of Sch 10 para 1(1)(b): Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 4.

11 As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

12 In any application under the Water Resources Act 1991 Sch 10 para 1: see PARA 300.

13 Persons are prescribed to be consulted for these purposes on any description of application if they are persons specified for the purposes of applications of that description in regulations made by the Secretary of State or, in relation to Wales, by the Welsh Ministers: Water Resources Act 1991 Sch 10 para 2(4)(a) (Sch 10 substituted by the Environment Act 1995 Sch 22 para 183). The prescribed persons are (1) every local authority or water undertaker within whose area any of the proposed discharges are to be made; (2) the Secretary of State or the Welsh Ministers if any of the proposed discharges are to be made into coastal waters, relevant territorial waters or waters outside the seaward limits of relevant territorial waters; (3) the harbour authority within the meaning of the Harbours Act 1964 s 57(1) (ie any person in whom are vested statutory powers or duties of improving, maintaining or managing a harbour) if any of the proposed discharges are to be made into a harbour managed by the authority; and (4) the local fisheries committee, if any of the proposed discharges are to be made into relevant territorial waters or coastal waters within the sea fisheries district of that committee: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 5(1). The statutory wording in head (2) above is 'each of the ministers'; but see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794. The statutory consultation requirements do not, however, apply in relation to any of the bodies mentioned in head (1) or heads (3)-(4) above in so far as they would require the disclosure of any information which is not to be included in a register by virtue of the Water Resources Act 1991 s 191A or 191B; or in relation to an application for, or for the variation of, a discharge consent which need not be advertised as a result of an exemption under the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 4 (see the text and notes 9-10): reg 5(3). As to the meaning of 'local authority' see PARA 99; as to the meaning of 'water undertaker' see **WATER AND WATERWAYS** vol

100 (2009) PARA 137 note 4; as to the meaning of 'coastal waters' and 'relevant territorial waters' see PARA 289; and as to local fisheries committees see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 964 et seq.

14 Persons are directed to be consulted for these purposes on any particular application if the Secretary of State or the Welsh Ministers specify them in a direction given to the Agency: Water Resources Act 1991 Sch 10 para 2(4)(b) (as substituted: see note 13).

15 Water Resources Act 1991 Sch 10 para 2(1) (as substituted: see note 13). The 'specified period for notification' is the period specified in the regulations or in the direction: Sch 10 para 2(4) (as so substituted). The specified period for notification of the persons mentioned in note 13 heads (1)-(4) above is the period of 14 days beginning with the relevant date; and for these purposes 'relevant date' has the same meaning as in the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 3 (see note 6): reg 5(2).

16 The period allowed for making representations is (1) in the case of persons prescribed or directed to be consulted, the period of six weeks beginning with the date on which notice of the application was given to them; and (2) in the case of other persons, the period of six weeks beginning with the last date on which the making of the application was advertised in pursuance of the Water Resources Act 1991 Sch 10 para 1(1)(b) (see PARA 300): Sch 10 para 2(6) (as substituted: see note 13; amended by virtue of Sch 10 para 2(7) (as so substituted) (Secretary of State's or Welsh Ministers' power by regulations to substitute for any period for the time being specified in head (1) or head (2) above such other period as he or they consider appropriate); and by the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 5(4)).

17 Water Resources Act 1991 Sch 10 para 2(3), (5) (as substituted: see note 13).

18 As to the meaning of 'information' see **WATER AND WATERWAYS** vol 100 (2009) PARA 117 note 13.

19 Water Resources Act 1991 Sch 10 para 2(2) (as substituted: see note 13). See the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 5(3); and note 13.

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302. Consideration and determination of applications.

On an application for a consent for any discharges into controlled waters¹, the Environment Agency² is under a duty, if the statutory requirements³ are complied with, to consider whether to give the consent applied for, either unconditionally or subject to conditions⁴, or to refuse it⁵. Unless otherwise agreed in writing between the Agency and the applicant, the applicant may treat the consent applied for as having been refused if it is not given within the period of four months beginning with the day on which the application is received⁶. The Secretary of State or, in relation to Wales, the Welsh Ministers may give the Agency a direction with respect to any particular application, or any description of applications, for consent requiring the Agency not to determine or not to proceed with the application, or applications of that description, until the expiry of any such period as may be specified in the direction, or until directed by him that it may do so⁷.

The conditions subject to which a consent may be given are such as the Agency may think fit and, in particular, may include conditions:

- 378 (1) as to the places at which the discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges;
- 379 (2) as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the periods during which the discharges may be made;
- 380 (3) as to the steps to be taken, in relation to the discharges or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters;
- 381 (4) as to the provision of facilities for taking samples of the matter discharged and, in particular, as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;
- 382 (5) as to the provision, maintenance and testing of meters for measuring or recording the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges;
- 383 (6) as to the keeping of records of the nature, origin, composition, temperature, volume and rate of the discharges and, in particular, of records⁸ of readings of meters and other recording apparatus provided in accordance with any other condition attached to the consent; and
- 384 (7) as to the making of returns and the giving of other information to the authority about the nature, origin, composition, temperature, volume and rate of the discharges⁹.

Where any person, having made an application to the Agency for a consent, has failed to comply with his obligation¹⁰ to provide information to the Agency, the Agency may refuse to proceed with the application, or refuse to proceed with it until the information is provided¹¹.

¹ ie an application under the Water Resources Act 1991 s 88(2), Sch 10 para 1: see PARA 300. As to the meaning of 'controlled waters' see PARA 289.

2 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

3 le the requirements of the Water Resources Act 1991 Sch 10 para 1 and of any regulations made thereunder and of any regulations made, or any directions given, under Sch 10 para 2 (see PARA 301): Sch 10 para 3(1)(a), (b) (Sch 10 substituted by the Environment Act 1995 Sch 22 para 183).

4 As to the conditions that may be imposed see heads (1)-(7) in the text. A consent may be given subject to different conditions in respect of different periods: Water Resources Act 1991 Sch 10 para 3(4) (as substituted: see note 3). It is submitted that this power to impose conditions is analogous to planning conditions and that the criteria for determining the validity of conditions set out in *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731, HL will be applicable. See JH Bates *Water and Drainage Law* (1990) PARA 10.92. See also *Taylor Woodrow Property Management Ltd v National Rivers Authority* (1994) 158 JP 1101, [1995] Env LR 52 (conditions having character of positive obligations; liability for failure or omission to comply, even though no act of discharge was committed). See also PARA 294 note 3 as to the effectiveness of blanket conditions, and the status of matter discharged in effluent that is not subject to a specific condition.

5 Water Resources Act 1991 Sch 10 para 3(1) (as substituted: see note 3). As there is no right of appeal against the determination of a consent by third parties affected by the determination of the consent, judicial review will be the only method by which a determination may be challenged by such a party. The parties to the application, however, have a statutory right of appeal: see PARA 311.

6 Water Resources Act 1991 Sch 10 para 3(2) (as substituted: see note 3). The Secretary of State or, in relation to Wales, the Welsh Ministers may, by regulations, substitute for any period for the time being specified in Sch 10 para 3(2) such other period as he or they consider appropriate: Sch 10 para 3(5) (as so substituted). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the making of regulations generally see **WATER AND WATERWAYS** vol 100 (2009) PARA 21. At the date at which this title states the law, no such regulations had been made.

7 Water Resources Act 1991 Sch 10 para 4 (as substituted: see note 3).

8 As to the meaning of 'records' see **WATER AND WATERWAYS** vol 100 (2009) PARA 117 note 13.

9 Water Resources Act 1991 Sch 10 para 3(4) (as substituted: see note 3).

10 le under the Water Resources Act 1991 Sch 10 para 1(3) or (4): see PARA 300.

11 Water Resources Act 1991 Sch 10 para 3(3) (as substituted: see note 3).

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303. Reference of certain applications to the Secretary of State or the Welsh Ministers.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹, may, either in consequence of representations or objections made to him or to them or otherwise, direct the Environment Agency² to transmit to him or to the Welsh Ministers for his or their determination such applications for consent to any discharges into controlled waters³ as are specified in the direction or are of a description specified in it⁴. Where any such direction is given, the Agency must comply with it and must inform every applicant to whose application the direction relates of the transmission of his application to the Secretary of State or the Welsh Ministers⁵.

Where an application is transmitted to him or to them under these provisions, the Secretary of State or the Welsh Ministers may at any time after the application is transmitted and before it is granted or refused cause a local inquiry⁶ to be held with respect to the application, or afford the applicant and the Agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Welsh Ministers for the purpose⁷. The Secretary of State or the Welsh Ministers must exercise this power in any case where a request to be heard with respect to the application is made to him or to them in the prescribed manner by the applicant or by the Agency⁸.

It is the Secretary of State's or the Welsh Ministers' duty, if these requirements and the requirements of any regulations made under these provisions⁹ are complied with, to determine an application for consent transmitted to him or to them by the Agency by directing the Agency to refuse its consent or to give its consent¹⁰ either unconditionally or subject to such conditions as are specified in the direction¹¹.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. There is a discretion vested in the Secretary of State as to whether to accede to a request for a transmission. The court will not interfere with this discretion unless the Secretary of State has failed to transmit when it was the only course that could have been taken: see *Rhys Williams v Secretary of State for Wales and the Welsh Water Authority and Taff Ely Borough Council* [1985] JPL 29, CA.

2 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

3 I.e. applications for consent under the Water Resources Act 1991 s 88(2), Sch 10 para 1: see PARA 300. As to the meaning of 'controlled waters' see PARA 289.

4 Water Resources Act 1991 Sch 10 para 5(1) (Sch 10 substituted by the Environment Act 1995 Sch 22 para 183).

5 Water Resources Act 1991 Sch 10 para 5(2) (as substituted: see note 4). Schedule 10 paras 1(1), 2 (see PARAS 300-301) have effect in relation to an application so transmitted to the Secretary of State or the Welsh Ministers with such modifications as may be prescribed: Sch 10 para 5(3) (as so substituted). As to the meaning of 'modifications' see **WATER AND WATERWAYS** vol 100 (2009) PARA 141 note 20. 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 221(1). The prescribed modification is that representations made to the Environment Agency within the period allowed for making representations must, instead of being considered by the Agency, be sent by the Agency to the Secretary of State or the Welsh Ministers and be considered by him or by them along with any representations made by the Agency: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 6(1), (2).

- 6 As to the procedure at such an inquiry see the Environment Act 1995 s 53(2); and PARA 89.
- 7 Water Resources Act 1991 Sch 10 para 5(4) (as substituted: see note 4).
- 8 Water Resources Act 1991 Sch 10 para 5(5) (as substituted: see note 4). A request to be heard by the applicant or the Agency with respect to the application must be made in writing to the Secretary of State or the Welsh Ministers within the period of 28 days beginning with the day on which the applicant is informed by the Agency of the transmission of his application to the Secretary of State or the Welsh Ministers: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 6(3).
- 9 Without prejudice to any of the provisions of the Water Resources Act 1991 Sch 10 para 5(1)-(6), the Secretary of State or the Welsh Ministers may by regulations make provision for the purposes of, and in connection with, the consideration and disposal by him or by them of applications so transmitted to him or to them: Sch 10 para 5(7) (as substituted: see note 4).
- 10 Ie under the Water Resources Act 1991 Sch 10 para 3: see PARA 302.
- 11 Water Resources Act 1991 Sch 10 para 5(6) (as substituted: see note 4).

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304. Consents without applications.

If it appears to the Environment Agency¹ that a person has caused or permitted² effluent³ or other matter to be discharged in contravention⁴ (1) of the obligation not to discharge trade or sewage effluent⁵ into any controlled waters⁶ or from land through a pipe⁷ into the sea outside their seaward limits⁸; or (2) of any statutory prohibition⁹, and that a similar contravention by that person is likely, the Agency may, if it thinks fit, serve on him¹⁰ an instrument in writing giving its consent, subject to any conditions¹¹ specified in the instrument, for discharges of a description so specified¹². A consent so given may not relate to any discharge which occurred before the instrument containing the consent was served on the recipient of the instrument¹³.

Where such a consent has been given, the Agency must publish notice of the consent in the manner prescribed¹⁴ by the Secretary of State or, in relation to Wales, by the Welsh Ministers, and send copies of the instrument containing it to the prescribed persons and bodies¹⁵. The Agency is entitled to recover the expenses of publication from the person on whom the instrument containing the consent was served¹⁶.

It is the Agency's duty to consider any representations or objections with respect to such a consent as are duly made¹⁷ to it and have not been withdrawn¹⁸.

1 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 See PARA 291.

3 As to the meaning of 'effluent' see **WATER AND WATERWAYS** vol 100 (2009) PARA 262 note 31.

4 As to the meaning of 'contravention' see **WATER AND WATERWAYS** vol 100 (2009) PARA 20 note 5.

5 As to the meanings of 'trade effluent' and 'sewage effluent' see **WATER AND WATERWAYS** vol 100 (2009) PARA 304 note 5.

6 As to the meaning of 'controlled waters' see PARA 289.

7 As to the meaning of 'pipe' see **WATER AND WATERWAYS** vol 100 (2009) PARA 187 note 2.

8 Ie the obligation imposed by virtue of the Water Resources Act 1991 s 85(3): see PARA 291 at head (3) in the text.

9 Ie any prohibition imposed under the Water Resources Act 1991 s 86: see PARA 292.

10 As to the service of notices and documents see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

11 The Water Resources Act 1991 s 88(2), Sch 10 para 3(4) (conditions that may be imposed: see PARA 302 at heads (1)-(7) in the text) has effect in relation to a consent so given as it has effect in relation to a consent given under Sch 10 para 3: Sch 10 para 6(3) (Sch 10 substituted by the Environment Act 1995 Sch 22 para 183).

12 Water Resources Act 1991 Sch 10 para 6(1) (as substituted: see note 11).

13 Water Resources Act 1991 Sch 10 para 6(2) (as substituted: see note 11).

14 'Prescribed' means prescribed by regulations made by the Secretary of State: see the Water Resources Act 1991 s 221(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. Notice of any such discharge consent must be published, within the period of 28 days beginning with the relevant date, in one or more newspapers circulating in the locality in which the discharges are made and in the locality in which the controlled waters which may be affected by the discharges are situated; and also in the London Gazette: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 7, Sch 1 paras 1(1), 2(1). The notice must (1) state the name of the person to whom the discharge consent was given; (2) specify where the discharges are made; (3) describe briefly the nature of the discharges; (4) state where the register containing information about the discharges may be inspected, the times at which the register is open for inspection and that the register may be inspected free of charge; (5) explain that any person may make representations in writing to the Environment Agency, specify when the period allowed for making representations ends and give the address of the Agency to which representations are to be sent: Sch 1 para 1(2). Nothing in these provisions, however, requires the disclosure of any information which is not to be included in a register by virtue of the Water Resources Act 1991 s 191A or 191B (exclusion from registers of information affecting national security and of certain confidential information) (see **WATER AND WATERWAYS** vol 100 (2009) PARAS 269-270): Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 1 para 1(3).

For these purposes, the relevant date, in relation to any discharge consent, is the date on which it comes into force: Sch 1 para 2(2). In a case, however, where a matter falls to be determined under the Water Resources Act 1991 s 191A, the relevant date is the date on which the Secretary of State or, in relation to Wales, the Welsh Ministers notify the applicant of his determination; and in a case where a matter falls to be determined under s 191B, the relevant date is (1) if the Environment Agency determines under s 191B(4) that the information in question is commercially confidential, the date on which the Agency notifies the applicant of its decision; (2) if the Agency determines under s 191B(4) that the information in question is not commercially confidential, the date (a) on which the period for appealing expires without an appeal having been made; (b) on which the Secretary of State notifies the applicant of his final determination of the appeal; or (c) on which the appeal is withdrawn: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 1 para 2(3), (4).

15 Water Resources Act 1991 Sch 10 para 6(4) (as substituted: see note 11). Copies of the discharge consent must be sent, within the period of 28 days beginning with the relevant date (within the meaning of the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 1 para 2: see note 14), to (1) every local authority or water undertaker within whose area any of the discharges are made; (2) the Secretary of State or the Welsh Ministers, if any of the discharges are made into coastal waters, relevant territorial waters or waters outside the seaward limits of relevant territorial waters; (3) the harbour authority (within the meaning of the Harbours Act 1964 s 57(1) (see PARA 301 note 13) if any of the discharges are made into a harbour managed by the authority; and (4) the local fisheries committee, if any of the discharges are made into relevant territorial waters or coastal waters within the sea fisheries district of that committee: Control of Pollution (Applications, Appeals and Registers) Regulations 1996 Sch 1 para 3(1), (5). The statutory wording in head (2) above is 'each of the ministers'; but see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794. Nothing in this provision, however, requires the disclosure in relation to any of the bodies mentioned in heads (1), (3)-(4) above of any information which is not to be included in a register by virtue of the Water Resources Act 1991 s 191A or 191B: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 1 para 3(4).

16 See the Water Resources Act 1991 Sch 10 para 6(6) (as substituted: see note 11).

17 It is made in such manner, and within such period, as may be prescribed by the Secretary of State or the Welsh Ministers: Water Resources Act 1991 Sch 10 para 6(5) (as substituted: see note 11). The period allowed for making representations or objections is (1) in the case of a person who is required to be consulted under the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 1 para 3(1) (see note 15), the period of six weeks beginning with the date on which a copy of the discharge consent is sent to him; and (2) in the case of any other person, the period of six weeks beginning with the last date on which the making of the application was advertised under Sch 1 para 1(1) (see note 14): Sch 1 para 3(4).

18 Water Resources Act 1991 Sch 10 para 6(5) (as substituted: see note 11).

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305. Consents required by the Environment Agency for its own discharges.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹, may by regulations (1) make provision modifying the water pollution provisions² of the Water Resources Act 1991 in relation to cases in which consents³ are required by the Environment Agency⁴; and (2) make such other modifications⁵ of those provisions as may be prescribed⁶ for the purposes of the application of the relevant provisions in relation to discharges by the Agency⁷.

An application by the Agency for a consent⁸ for any discharges must be made to the Secretary of State or the Welsh Ministers in writing accompanied by such information as he or they may require⁹, and must be advertised by the Agency in the prescribed manner¹⁰. Within the period of 28 days beginning with the date on which any such application is made, the Agency must give notice of the application, together with a copy of it, to the prescribed persons and bodies¹¹. If all these requirements are complied with, the Secretary of State or the Welsh Ministers is under a duty, on such an application, to consider whether to give the consent applied for, either conditionally or subject to conditions¹², or to refuse it¹³. Any representations made by any persons within the period allowed¹⁴, and not withdrawn, must be considered by the Secretary of State or the Welsh Ministers in determining the application¹⁵. Before determining an application, the Secretary of State or the Welsh Ministers may, and must if the Agency requests him or them to do so, cause a local inquiry to be held with respect to the application, or afford the Agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Welsh Ministers for the purpose¹⁶.

The Agency also may make an application in writing to the Secretary of State or the Welsh Ministers for the variation of a consent so given¹⁷.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 'Water pollution provisions' means: (1) the provisions of the Water Resources Act 1991 Pt III (ss 82-104) (see PARA 289 et seq); (2) ss 161-161D, s 190, s 202, and s 203 (see PARAS 321 et seq, 343, 345, 346); (3) s 210(1), Sch 25 para 4, and s 211 so far as relating to byelaws made under Sch 25 para 4 (see PARA 333); and (4) the Environment Act 1995 s 53(1), (2) (see PARA 89): Water Resources Act 1991 s 221(1) (definition amended by the Environment Act 1995 Sch 22 para 177(10)).

3 Ie consents under the Water Resources Act 1991 Pt III Ch II (ss 85-91): see PARA 291 et seq.

4 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

5 As to the meaning of 'modifications' see **WATER AND WATERWAYS** vol 100 (2009) PARA 141 note 20.

6 'Prescribed' means prescribed by regulations made by the Secretary of State: see the Water Resources Act 1991 s 221(1). See note 7.

7 Water Resources Act 1991 s 99(1) (s 99 amended by the Environment Act 1995 Sch 22 para 128). Without prejudice to the generality of this provision, regulations so made may provide for such consents as are mentioned in head (1) in the text to be required to be given by the Secretary of State or by the Welsh Ministers, instead of by the Environment Agency, and, in prescribed cases, to be deemed to have been so given: Water Resources Act 1991 s 99(2) (as so amended). In exercise of this power, the Secretary of State has made the

Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 14(2), Sch 2: see the text and notes 8-15.

8 le a consent for the purposes of the Water Resources Act 1991 s 88(1)(a): see PARA 294. An application made in accordance with these provisions which relates to proposed discharges at two or more places may be treated by the Secretary of State or the Welsh Ministers as separate applications for consents for discharges at each of those places: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 1(5).

9 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 1(1). The Secretary of State or the Welsh Ministers may give the Environment Agency notice requiring it to provide him or the Welsh Ministers with such further information of any description specified in the notice as he or they may require for the purpose of determining the application: Sch 2 para 1(4).

10 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 1(1). Notice of the application must be published within the period of 28 days beginning with the date on which the application is received in one or more newspapers circulating in the locality in which the proposed discharges are to be made and in the locality in which the controlled waters likely to be affected by the proposed discharges are situated, and also in the London Gazette: Sch 2 para 1(2). The notice must (1) state that the application is made by the Environment Agency; (2) specify where the discharges are proposed to be made; (3) describe briefly the nature of the proposed discharges; (4) state where the register containing information about the application may be inspected, the times at which the register is open for inspection and that the register may be inspected free of charge; and (5) explain that any person may make representations in writing to the Secretary of State or the Welsh Ministers, specify when the period allowed for making representations ends and give the address to which representations are to be sent: Sch 2 para 1(3).

11 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 2(1). The prescribed persons and bodies are (1) every local authority or water undertaker within whose area any of the proposed discharges are to be made; (2) the Secretary of State or the Welsh Ministers if any of the proposed discharges are to be made into coastal or relevant territorial waters, or waters outside the seaward limits of relevant territorial waters, which are in or adjacent to England; (3) the harbour authority (within the meaning of the Harbours Act 1964 s 57(1): see PARA 301 note 13) if any of the proposed discharges are to be made into a harbour managed by the authority; and (4) the local fisheries committee, if any of the proposed discharges are to be made into relevant territorial waters or coastal waters within the sea fisheries district of that committee: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 2(1).

12 The conditions subject to which a consent may be so given are such as the Secretary of State or the Welsh Ministers may think fit and may, in particular, include conditions (1) as to the places at which the discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges; (2) as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the periods during which the discharges may be made; (3) as to the steps to be taken, in relation to the discharges or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters; (4) as to the provision of facilities for taking samples of the matter discharged and, in particular, as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges; (5) as to the provision, maintenance and testing of meters for measuring or recording the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges; (6) as to the keeping of records of the nature, origin, composition, temperature, volume and rate of the discharges and, in particular, of records of readings of meters and other recording apparatus provided in accordance with any other conditions attached to the consent; and (7) as to the making of returns and the giving of other information to the Secretary of State or the Welsh Ministers about the nature, origin, composition, temperature, volume and rate of the discharges; and a consent may be given subject to different conditions in respect of different periods: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 3(2).

13 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 3(1).

14 The period allowed for making representations is (1) in the case of persons given notice of the application under the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 2(1) (see note 13), the period of six weeks beginning with the date on which the notice was given thereunder; and (2) in the case of other persons, the period of six weeks beginning with the last date on which the making of the application was advertised under Sch 2 para 1(2) (see note 10): Sch 2 para 2(3).

15 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 2(2).

16 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 3(3). As to local inquiries see **WATER AND WATERWAYS** vol 101 (2009) PARA 657.

17 See the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 5(1). The application must be accompanied by such information as the Secretary of State may require: Sch 2 para 5(1). The provisions of Sch 2 paras 1-3 apply, with the necessary modifications, to applications under Sch 2 para 5(1), and to the variation of consents in pursuance of such applications, as they apply to applications for, and the grant of, consents: Sch 2 para 5(2).

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306. Revocation of consents and alteration and imposition of conditions.

The Environment Agency¹ may from time to time review any consent it has given for any discharges into controlled waters² and the conditions, if any, to which the consent is subject³. Where the Agency has reviewed a consent, it may⁴ by a notice served⁵ on the person making the discharge in pursuance of the consent, revoke it⁶, make modifications⁷ of its conditions⁸ or provide, if the consent is unconditional, that it is to be subject to such conditions as may be specified in the notice⁹. If on such a review it appears to the Agency that no discharge has been made in pursuance of the consent to which the review relates at any time during the preceding 12 months, it may revoke the consent by a notice served on its holder¹⁰.

If it appears to him or to the Welsh Ministers appropriate to do so:

- 385 (1) for the purpose of enabling her Majesty's government in the United Kingdom¹¹ to give effect to any Community obligation¹² or to any international agreement to which the United Kingdom is for the time being a party;
- 386 (2) for the protection of public health or of flora and fauna dependent on an aquatic environment; or
- 387 (3) in consequence of any representations or objections made to him or to it or otherwise,

the Secretary of State or, in relation to Wales, the Welsh Ministers¹³ may at any time¹⁴ direct the Agency to revoke or modify a consent or, if it is an unconditional consent, to provide that it is to be subject to conditions¹⁵. The Agency is liable to pay compensation to any person in respect of any loss or damage¹⁶ sustained by that person as a result of the Agency's compliance with a direction given in relation to any consent by virtue of head (2) above if (a) in complying with that direction, the Agency does anything which it would otherwise be precluded from doing by a restriction imposed¹⁷ on the variation and revocation of the consent; and (b) the direction is not shown to have been given in consequence of a change of circumstances which could not reasonably have been foreseen at the beginning of the period to which the restriction relates, or in consequence of consideration by the Secretary of State or the Welsh Ministers of material information¹⁸ which was not reasonably available to the Agency at the beginning of that period¹⁹.

In addition, the holder of a consent may apply to the Agency, on a form provided for that purpose by the Agency, for the variation of the consent²⁰.

Each instrument signifying the consent of the Agency must, however, specify a period during which:

- 388 (i) no notice revoking the consent may be served by the Agency after a review²¹;
- 389 (ii) no notice revoking or modifying a consent or attaching conditions to an unconditional consent may be served by the Agency by virtue of a direction given under head (3) above²²; and
- 390 (iii) no notice modifying a consent or attaching conditions to an unconditional consent may be served by the Agency after a review²³ without the agreement of the holder of the consent²⁴.

Each such notice as is mentioned in heads (i) to (iii) above, except a notice which only revokes a consent, must specify a period during which a subsequent such notice which alters the effect of the first-mentioned notice must not be served except, in the case of such a notice as is mentioned in head (iii) above, with the agreement of the holder of the consent²⁵. Unless the person who proposes to make or makes discharges in pursuance of the consent otherwise agrees, the specified period must not be less than four years²⁶.

These restrictions do not, however, prevent the service by the Agency of such a notice in respect of a consent given without an application for it having been made²⁷ if the notice is served not more than three months after the beginning of the prescribed period²⁸ for making representations and objections with respect to the consent and the Agency or, as the case may be, the Secretary of State or the Welsh Ministers consider, in consequence of any representations or objections received by it or him, or by the Welsh Ministers, within that period, that it is appropriate for the notice to be served²⁹. Nor do they prevent, in the case of such a consent, the service of such a notice as is mentioned in head (ii) or head (iii) above if the holder has applied³⁰ for a variation³¹.

The Secretary of State or the Welsh Ministers may from time to time review any consent given to the Agency³² and the conditions, if any, to which it is subject, and may by a notice served on the Agency revoke the consent, make modifications of its conditions or, in the case of an unconditional consent, provide that it is to be subject to such conditions as may be specified in the notice³³.

1 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 In any consent under the Water Resources Act 1991 s 88(2), Sch 10 para 3 or 6: see PARAS 302, 304. As to the meaning of 'controlled waters' see PARA 289.

3 Water Resources Act 1991 Sch 10 para 7(1) (Sch 10 substituted by the Environment Act 1995 Sch 22 para 183).

4 In subject to the restrictions on the exercise of this power imposed under the Water Resources Act 1991 Sch 10 para 8: see the text and notes 21-31.

5 As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

6 Water Resources Act 1991 Sch 10 para 7(2)(a) (as substituted: see note 3).

7 As to the meaning of 'modifications' see **WATER AND WATERWAYS** vol 100 (2009) PARA 141 note 20.

8 Water Resources Act 1991 Sch 10 para 7(2)(b) (as substituted: see note 3). As to the conditions that may be attached to a consent see PARA 302 at heads (1)-(7) in the text.

9 Water Resources Act 1991 Sch 10 para 7(2)(c) (as substituted: see note 3).

10 Water Resources Act 1991 Sch 10 para 7(3) (as substituted: see note 3).

11 As to the meaning of 'United Kingdom' see PARA 1 note 2.

12 'Community obligation' means such an obligation within the meaning of the European Communities Act 1972: see the Interpretation Act 1978 s 5, Sch 1. As to such obligations see PARA 23 et seq; and **WATER AND WATERWAYS** vol 100 (2009) PARAS 7, 8.

13 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. There is no restriction on who can make representations or objections under head (3) in the text; thus third parties potentially affected by the application may lodge objections.

14 See note 4.

- 15 Water Resources Act 1991 Sch 10 para 7(4) (as substituted: see note 3).
- 16 As to the meaning of 'damage', in relation to an individual, see **WATER AND WATERWAYS** vol 100 (2009) PARA 129 note 7.
- 17 Ie under the Water Resources Act 1991 Sch 10 para 8: see the text and notes 21-31.
- 18 For these purposes, information is material, in relation to a consent, if it relates to any discharge made or to be made by virtue of the consent, to the interaction of any such discharge with any other discharge or to the combined effect of the matter discharged and any other matter: Water Resources Act 1991 Sch 10 para 7(6) (as substituted: see note 3). As to the meaning of 'information' see **WATER AND WATERWAYS** vol 100 (2009) PARA 117 note 13.
- 19 Water Resources Act 1991 Sch 10 para 7(5) (as substituted: see note 3). The Environment Agency will only be liable to pay compensation if the variation occurs during the protected period: see the text and notes 25-26.
- 20 Water Resources Act 1991 Sch 10 para 10(1) (as substituted: see note 3). The provisions of Sch 10 paras 1-5 (see PARAS 300-303) apply with the necessary modifications to such applications, and to the variation of consents in pursuance of such applications, as they apply to applications for, and the grant of, consents: Sch 10 para 10(2) (as so substituted). See the Control of Pollution (Channel Tunnel Rail Link) Regulations 1998, SI 1998/1649, which were made under a number of provisions of the Water Resources Act 1991 including Sch 10 para 10(2).
- 21 Ie no notice by virtue of the Water Resources Act 1991 Sch 10 para 7(2)(a): see the text and note 6.
- 22 Ie no notice by virtue of the Water Resources Act 1991 Sch 10 para 7(4)(c): see head (3) in the text.
- 23 Ie no notice by virtue of the Water Resources Act 1991 Sch 10 para 7(2)(b) or (c): see the text and notes 7-9.
- 24 Water Resources Act 1991 Sch 10 para 8(1) (as substituted: see note 3).
- 25 Water Resources Act 1991 Sch 10 para 8(2) (as substituted: see note 3).
- 26 Water Resources Act 1991 Sch 10 para 8(3) (as substituted: see note 3). This replaces the previous protected period under Sch 10 (as originally enacted) of two years. The period begins (1) in the case of a period specified under Sch 10 para 8(1) (see the text and notes 21-24) with the day on which the consent takes effect; and (2) in the case of a period specified under Sch 10 para 8(2) (see the text and note 25) with the day on which the notice specifying that period is served: Sch 10 para 8(3) (as so substituted).
- 27 Ie a consent under the Water Resources Act 1991 Sch 10 para 6: see PARA 304.
- 28 Ie the period prescribed under the Water Resources Act 1991 Sch 10 para 6(5): see PARA 304.
- 29 Water Resources Act 1991 Sch 10 para 8(4) (as substituted: see note 3).
- 30 Ie under the Water Resources Act 1991 Sch 10 para 10: see the text and note 20.
- 31 Water Resources Act 1991 Sch 10 para 8(5) (as substituted: see note 3).
- 32 Ie any consent given under the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 14(2), Sch 2 para 3: see PARA 305.
- 33 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 4(1), (2).

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307. General review of consents.

If it appears appropriate to him or to them to do so, the Secretary of State or, in relation to Wales, the Welsh Ministers¹ may at any time direct the Environment Agency² to review the consents given for any discharges into controlled waters³ or any description of such consents and the conditions, if any, to which those consents are subject⁴. After carrying out a review pursuant to such a direction, the Agency must submit to the Secretary of State or the Welsh Ministers its proposals, if any, for the modification⁵ of the conditions of any consent so reviewed, or, in the case of any unconditional consent so reviewed, for subjecting it to conditions⁶.

Where the Secretary of State or the Welsh Ministers have received any proposals in relation to any consent from the Agency following the review, he or the Welsh Ministers may, if it appears to him or to them appropriate to do so, direct the Agency to modify the conditions of the consent⁷ or, in the case of an unconditional consent, to attach conditions⁸ to it⁹; but the direction may only direct the Agency to do any such thing in relation to any consent as it has proposed, or any such thing with such modifications as appear to the Secretary of State or the Welsh Ministers to be appropriate¹⁰.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

3 I.e. consents given under the Water Resources Act 1991 s 88(2), Sch 10 para 3 or 6: see PARAS 302, 304. As to the meaning of 'controlled waters' see PARA 289.

4 Water Resources Act 1991 Sch 10 para 9(1) (Sch 10 substituted by the Environment Act 1995 Sch 22 para 183). Such a direction must specify the purpose for which, and may specify the manner in which, the review is to be conducted: Water Resources Act 1991 Sch 10 para 9(2) (as so substituted). The Environment Agency has, for example, been required to review discharge consents to ensure compliance with the Habitats Directive (EC Council Directive 92/43 (OJ L206, 22.07.92, p 07): see PARA 54) and the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716. As to that Directive and the 1994 Regulations which implement it see **WATER AND WATERWAYS** vol 101 (2009) PARA 679. However see now also the Conservation of Habitats and Species Regulations 2010, SI 2010/490 (which replace and consolidate the 1994 Regulations); and **OPEN SPACES AND COUNTRYSIDE**.

5 As to the meaning of 'modifications' see **WATER AND WATERWAYS** vol 100 (2009) PARA 141 note 20.

6 Water Resources Act 1991 Sch 10 para 9(3) (as substituted: see note 4).

7 I.e. to do anything mentioned in the Water Resources Act 1991 Sch 10 para 7(2)(b): see PARA 306 the text and notes 7-8.

8 I.e. to do anything mentioned in the Water Resources Act 1991 Sch 10 para 7(2)(c): see PARA 306 the text and note 8. As to the conditions that may be attached see PARA 302 at heads (1)-(7) in the text.

9 Water Resources Act 1991 Sch 10 para 9(4) (as substituted: see note 4).

10 Water Resources Act 1991 Sch 10 para 9(5) (as substituted: see note 4).

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308. Transfer of consents.

A consent for any discharges into controlled waters¹ may be transferred by the holder to a person who proposes to carry on the discharges in his place². On the death of the holder of such a consent, that consent is regarded as property forming part of the deceased's personal estate³ and accordingly vests in his personal representatives⁴. If a bankruptcy order is made against the consent holder, then the consent is regarded⁵ as property forming part of the bankrupt's estate⁶ and accordingly vests as such in his trustee in bankruptcy⁷.

A consent which is so transferred to or vested in a person has effect on and after the date of the transfer or vesting as it if had been granted⁸ to that person subject to the same conditions as were attached to it immediately before that date⁹. Subject to transitional provisions¹⁰, where such a consent is to be so transferred:

391 (1) the person from whom and the person to whom the consent is to be transferred must give joint notice¹¹ to the Environment Agency¹² of the proposed transfer;

392 (2) the notice may specify the date on which it is proposed that the transfer should take effect;

393 (3) within 21 days beginning with the date of receipt of the notice duly given¹³, the Agency must:

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9. (a) arrange to amend the consent by substituting the name of the transferee as holder of the consent; and

10. (b) serve notice on the transferor and the transferee that the amendment has been made¹⁴; and

10

394 (4) the transfer takes effect from the later of the date on which the Agency amends the consent and the date (if any) specified in the joint notice under head (1) above¹⁵.

In transitional cases where the provisions set out in heads (1) to (4) do not apply, where a consent is so transferred, the person from whom it is transferred must give notice of that fact to the Environment Agency not later than the end of the period of 21 days beginning with the date of the transfer¹⁶.

Where a consent so vests in any personal representative or trustee in bankruptcy, that person must give notice of that fact to the Agency not later than the end of the period of 15 months beginning with the date of the vesting¹⁷ and if he fails to do so the consent, to the extent that it permits the making of any discharges, ceases to have effect¹⁸.

A person who fails to give the required notice¹⁹ is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or to both²⁰.

A consent granted to the Agency²¹ may be transferred by the Agency to a person who proposes to carry on making the discharges in place of the Agency²². It has effect on and after the date of

the transfer as if it had been granted to that person²³, subject to such modifications as the Agency may specify in writing²⁴. Where such a consent is transferred, the Agency must give notice of that fact to the Secretary of State or, in relation to Wales, to the Welsh Ministers²⁵.

1 Ie a consent under the Water Resources Act 1991 s 88(2), Sch 10 para 3 or 6: see PARAS 302, 304. As to the meaning of 'controlled waters' see PARA 289.

2 Water Resources Act 1991 Sch 10 para 11(1) (Sch 10 substituted by the Environment Act 1995 Sch 22 para 183, which introduced the ability to transfer a consent for such discharges for the first time).

3 Ie whether or not it would otherwise be so regarded: Water Resources Act 1991 Sch 10 para 11(2) (as substituted: see note 2).

4 Water Resources Act 1991 Sch 10 para 11(2) (as substituted (see note 2); Sch 10 para 11(2), (3), (9) amended, and Sch 10 para 11(4) repealed, by the Water Act 2003 ss 87(1)-(4), (6), Sch 9 Pt 3, subject to transitional provisions (see note 10)). Where those transitional provisions apply, then (1) neither a consent nor any of the obligations arising out of, or incidental to, such a consent may be disclaimed (Water Resources Act 1991 Sch 10 para 11(4) (as so substituted and repealed) which is expressed to take effect notwithstanding anything in Sch 10 para 11(1)-(3) (as so substituted)); and (2) Sch 10 para 11(2), (3) is subject to Sch 10 para 11(4).

5 Ie for the purposes of the Insolvency Act 1986 Pts VIII-XI (ss 252-385): see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

6 Ie whether or not it would otherwise be so regarded: Water Resources Act 1991 Sch 10 para 11(3) (as substituted: see note 2).

7 Water Resources Act 1991 Sch 10 para 11(3) (as substituted and amended: see notes 2, 4).

8 Ie under the Water Resources Act 1991 Sch 10 para 3 or 6: see PARAS 302, 304.

9 Water Resources Act 1991 Sch 10 para 11(5) (as substituted: see note 2).

10 The amendments made by the Water Act 2003 s 87 do not apply in relation to any transfer of a consent under the Water Resources Act 1991 Sch 10 para 11(1) which takes effect before 1 October 2004: see the Water Act 2003 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2528, art 4, Schedule para 6.

11 A joint notice under head (1) in the text will be required to include such information as may be prescribed: Water Resources Act 1991 Sch 10 para 11(6A) (Sch 10 para 11(6), (6A)-(6C) substituted by the Water Act 2003 s 87(1), (5)). If the person from whom the consent is to be transferred is a person in whom the consent has vested by virtue of the Water Resources Act 1991 Sch 10 para 11(2) or (3), a joint notice so given will be of no effect unless the notice required by Sch 10 para 11(7) has been given: Sch 10 para 11(6B) (as so substituted). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 221(1).

12 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

13 Ie under the Water Resources Act 1991 Sch 10 para 11(6A): see note 11.

14 A notice or other instrument given by or on behalf of the Environment Agency pursuant to the Water Resources Act 1991 Sch 10 para 11(6) does not constitute an instrument signifying the consent of the Agency for the purposes of Sch 10 para 8 (see PARA 306): Sch 10 para 11(6C) (as substituted: see note 11). As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

15 Water Resources Act 1991 Sch 10 para 11(6) (as substituted: see note 11).

16 Water Resources Act 1991 Sch 10 para 11(6) (as substituted: see note 11).

17 Water Resources Act 1991 Sch 10 para 11(7) (as substituted: see note 2).

18 Water Resources Act 1991 Sch 10 para 11(8) (as substituted: see note 2).

19 Ie (1) where the transitional provisions set out in note 10 apply, the notice which he is required to give by the Water Resources Act 1991 Sch 10 para 11(6) or (7); (2) otherwise, the notice which he is required to give by

Sch 10 para 11(7): Sch 10 para 11(9) (as substituted (see note 2): see head (1) above; and as amended (see note 4): see head (2) above).

20 Water Resources Act 1991 Sch 10 para 11(9) (as substituted and amended: see notes 2, 4). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to offences by bodies corporate see **WATER AND WATERWAYS** vol 100 (2009) PARA 185. As to the time limit for summary proceedings see PARA 291 note 18.

21 *Ie* under the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 14(2), Sch 2 para 3: see PARA 305.

22 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 6(1).

23 *Ie* under the Water Resources Act 1991 s 88(2), Sch 10 para 3: see PARA 302.

24 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 6(2).

25 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, Sch 2 para 6(3). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

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C. AUTHORISATION OF CERTAIN DEPOSITS AND OTHER ACTIVITIES

309. Applications for consent.

The following provisions apply¹ in relation to consents for:

- 395 (1) depositing solid refuse from a mine or quarry on land where there is a danger that it may fall or be carried into inland freshwaters²;
- 396 (2) removing certain deposits from any part of the bottom, channel or bed of any inland freshwaters³; or
- 397 (3) causing or permitting a substantial amount of vegetation to be cut or uprooted in or near any inland freshwaters⁴.

An application for any such consent must be made on a form provided for the purpose by the Environment Agency⁵ and must, unless exempt from this requirement⁶, be advertised in such manner as may be required by regulations made by the Secretary of State or, in relation to Wales, by the Welsh Ministers⁷. At the time when he makes his application, the applicant for such a consent must provide the Agency with all such information⁸ as it reasonably requires and with all such information as may be prescribed⁹ for the purpose by the Secretary of State or the Welsh Ministers¹⁰.

The Agency may give the applicant notice¹¹ requiring him to provide it with all such further information of any description specified in the notice as it may require for the purpose of determining the application¹² and if he fails to do so, it may refuse to proceed with the application, or refuse to proceed with it until the information is provided¹³.

1 See the Water Resources Act 1991 s 90A (added by the Environment Act 1995 Sch 22 para 142); and the text and notes 2-13.

2 I.e a consent for the purposes of the Water Resources Act 1991 s 89(4)(a): see PARA 295. As to the meaning of 'inland freshwaters' see PARA 289 at head (3) in the text.

3 I.e a consent for the purposes of the Water Resources Act 1991 s 90(1): see PARA 293.

4 I.e a consent for the purposes of the Water Resources Act 1991 s 90(2): see PARA 293.

5 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

6 Regulations may specify an application of any class or description as being exempt from this requirement: see the Water Resources Act 1991 s 90A(1) (as added: see note 1). As to such exemptions see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 4; and PARA 301.

7 Water Resources Act 1991 s 90A(1) (as added: see note 1). As to the prescribed manner of advertising such applications see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, regs 2, 3; and PARA 301. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

8 As to the meaning of 'information' see **WATER AND WATERWAYS** vol 100 (2009) PARA 117 note 13.

9 'Prescribed' means prescribed by regulations made by the Secretary of State: see the Water Resources Act 1991 s 221(1). See note 6.

10 Water Resources Act 1991 s 90A(2) (as added: see note 1). The required information must be provided either on, or together with, the application form: see s 90A(3) (as so added).

11 As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

12 Water Resources Act 1991 s 90A(4) (as added: see note 1).

13 Water Resources Act 1991 s 90A(5) (as added: see note 1).

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D. ENFORCEMENT AND APPEALS

310. Enforcement notices.

If the Environment Agency¹ is of the opinion that the holder of a relevant consent² is contravening, or is likely to contravene, any condition of the consent, it may serve a notice³ on him (an 'enforcement notice')⁴, which must state that the Agency is of that opinion and specify:

- 398 (1) the matters constituting the contravention⁵ or making it likely that the contravention will arise;
- 399 (2) the steps that must be taken to remedy the contravention, or, as the case may be, to remedy the matters making it likely that the contravention will arise; and
- 400 (3) the period within which those steps must be taken⁶.

Any person who fails to comply with any requirement imposed by an enforcement notice is guilty of an offence and liable to imprisonment or a fine or both⁷. If, however, the Agency is of the opinion that proceedings for such an offence would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice, the Agency may take proceedings in the High Court for the purpose of securing compliance with the notice⁸.

The Secretary of State or, in relation to Wales, the Welsh Ministers⁹, may, if he or they think fit in relation to any person, give directions to the Agency as to whether it should exercise these powers and as to the steps which must be taken¹⁰.

¹ As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

² For these purposes, 'relevant consent' means (1) a consent for the purposes of the Water Resources Act 1991 s 89(4)(a) (see PARA 1078) or s 90(1) or (2) (see PARA 1076); or (2) a discharge consent within the meaning of s 91; and the 'holder', in relation to a relevant consent, is the person who has the consent in question: s 90B(6) (s 90B added by the Environment Act 1995 Sch 22 para 142). For these purposes, 'discharge consent' means such a consent under the Water Resources Act 1991 Pt III Ch II (ss 85-91) for any discharges or descriptions of discharges as is given for the purposes of s 88(1)(a) (see PARA 294) either on an application for a consent or, by virtue of s 88(2), Sch 10 para 6 (see PARA 303) without such an application having been made: s 91(8) (amended by the Environment Act 1995 Sch 22 para 143(4)).

³ As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

⁴ Water Resources Act 1991 s 90B(1) (as added: see note 2). The enforcement notice procedure was introduced by the Environment Act 1995 and enables the Environment Agency to regulate compliance with consents through methods other than criminal prosecution.

⁵ As to the meaning of 'contravention' see **WATER AND WATERWAYS** vol 100 (2009) PARA 20 note 5.

⁶ Water Resources Act 1991 s 90B(2) (as added: see note 2).

⁷ Water Resources Act 1991 s 90B(3) (as added: see note 2). Such a person is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £20,000, or to both, or on

conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both: see s 90B(3) (as so added). As to offences by bodies corporate see **WATER AND WATERWAYS** vol 100 (2009) PARA 185. As to the time limit for summary proceedings see PARA 291 note 18.

8 Water Resources Act 1991 s 90B(4) (as added: see note 2).

9 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

10 Water Resources Act 1991 s 90B(5) (as added: see note 2).

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311. Rights of appeal in respect of consents.

The following provisions apply where the Environment Agency¹ has, otherwise than in pursuance of a direction of the Secretary of State or, in relation to Wales, of the Welsh Ministers²:

- 401 (1) refused a consent for any discharges into controlled waters³ on an application for such consent⁴;
- 402 (2) in giving a discharge consent⁵ made it subject to conditions⁶;
- 403 (3) revoked a discharge consent, modified the conditions of any such consent or provided that any such consent which was unconditional is to be subject to conditions⁷;
- 404 (4) specified a review period⁸ in relation to a discharge consent without the agreement of the person who proposes to make, or makes, discharges in pursuance of that consent⁹;
- 405 (5) refused a consent¹⁰ for any deposit of solid refuse from a mine or quarry on land where there is a danger that it may fall or be carried into inland freshwaters¹¹;
- 406 (6) refused a consent for removing certain deposits from any part of the bottom, channel or bed of any inland freshwaters or for causing or permitting a substantial amount of vegetation to be cut or uprooted in or near any inland freshwaters¹², or, in giving any such consent, made that consent subject to conditions¹³;
- 407 (7) refused a variation of any such consent as is mentioned above, or, in allowing any such variation, made the consent subject to conditions¹⁴; or
- 408 (8) served an enforcement notice¹⁵ on any person¹⁶.

The person, if any¹⁷, who applied for the consent or variation in question, or any person whose deposits, discharges or other conduct is or would be authorised by the consent, or the person on whom the enforcement notice was served, may appeal against the decision to the Secretary of State or the Welsh Ministers¹⁸. In general, where an appeal is brought by virtue of head (3) above against a decision to revoke or to modify the conditions of a discharge consent, or to provide that any such consent which was unconditional is to be subject to conditions, the revocation, modification or provision does not take effect pending the final determination or the withdrawal of the appeal¹⁹; but this is disapplied in certain cases²⁰. Where the decision under appeal falls under this exclusion and on the application of the holder or former holder of the consent, the Secretary of State or the Welsh Ministers, or other person determining the appeal, determines that the Agency acted unreasonably in applying the exclusion, then if the appeal is still pending at the end of the day on which that determination is made, the revocation, modification or provision made by the decision which is being appealed against does not take effect, as from the end of that day, until the final determination or withdrawal of the appeal²¹, and the holder or former holder of the consent is entitled to recover compensation from the Agency in respect of any loss suffered by him in consequence of the exclusion²².

¹ As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Ie a consent for the purposes of the Water Resources Act 1991 s 88(1)(a): see PARA 294. As to applications for such consents see PARA 300 et seq. As to the meaning of 'controlled waters' see PARA 289.

4 Water Resources Act 1991 s 91(1)(a).

5 As to the meaning of 'discharge consent' for these purposes see the Water Resources Act 1991 s 91(8); and PARA 310 note 2.

6 Water Resources Act 1991 s 91(1)(b). As to the conditions that may be imposed see PARA 302 at heads (1)-(7) in the text.

7 Water Resources Act 1991 s 91(1)(c).

8 Ie for the purposes of the Water Resources Act 1991 s 88(2), Sch 10 para 8(1) or (2): see PARA 306.

9 Water Resources Act 1991 s 91(1)(d) (amended by the Environment Act 1995 Sch 22 para 143(1)(a)).

10 Ie a consent for the purposes of the Water Resources Act 1991 s 89(4)(a): see PARA 295.

11 Water Resources Act 1991 s 91(1)(e). As to the meaning of 'inland freshwaters' see PARA 289 at head (3) in the text.

12 Ie a consent for the purposes of the Water Resources Act 1991 s 90: see PARA 293.

13 Water Resources Act 1991 s 91(1)(f).

14 Water Resources Act 1991 s 91(1)(g) (added by the Environment Act 1995 Sch 22 para 143(1)(b)).

15 As to the meaning of 'enforcement notice' see PARA 310.

16 Water Resources Act 1991 s 91(1)(h) (added by the Environment Act 1995 Sch 22 para 143(1)(b)). The bringing of the appeal does not have the effect of suspending the operation of the notice: Water Resources Act 1991 s 91(2)) (s 91(2F)-(2J) added by the Environment Act 1995 Sch 22 para 143(3)).

17 As to the granting of a consent without application being made for it see PARA 304.

18 Water Resources Act 1991 s 91(2) (amended by the Environment Act 1995 s 143(2)). As to the procedure on the appeal see PARA 312.

19 Water Resources Act 1991 s 91(2F) (as added: see note 16).

20 The Water Resources Act 1991 s 91(2F) does not apply to a decision in the case of which the notice effecting the revocation, modification or provision in question includes a statement that in the Environment Agency's opinion it is necessary that it should be disapplied for the purpose of preventing or, where that is not practicable, minimising, the entry into controlled waters of any poisonous, noxious or polluting matter or any waste matter, or of preventing or minimising harm to human health: see s 91(2G) (as added (see note 16); and amended by SI 2007/3538). As to the meaning of 'waste' see the Water Resources Act 1991 s 85(7); and PARA 291 note 5; definition applied by s 91(9) (added by SI 2007/3538).

21 Ie the Water Resources Act 1991 s 91(2F) applies to the decision: s 91(2H) (as added: see note 16).

22 See the Water Resources Act 1991 s 91(2H) (as added: see note 16). Any dispute as to a person's entitlement to such compensation or as to the amount of it is to be decided by arbitration: s 91(2H) (as so added).

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312. Procedure on appeals in respect of consents.

The Secretary of State or, in relation to Wales, the Welsh Ministers may delegate his or their powers of appeal¹ and the procedure set out below is subject to that power². The Secretary of State or the Welsh Ministers may also make regulations with respect to appeals relating to consents³. If, and to the extent, required by any such regulations, an appeal must be advertised in the prescribed manner⁴.

A person who wishes to appeal to the Secretary of State or to the Welsh Ministers⁵ must give notice of appeal within the prescribed period⁶ specifying the grounds of appeal and indicating whether the appellant wishes the appeal to be determined on the basis of a hearing or written representations⁷. The notice of appeal must be accompanied by copies of any application, consent, correspondence, decision, notice or other document relevant to the appeal⁸ and at the same time as the appellant gives notice of the appeal to the Secretary of State or to the Welsh Ministers, the appellant must send a copy of the notice of appeal to the Environment Agency⁹, together with a list of the documents so provided to the Secretary of State or the Welsh Ministers¹⁰.

If the appellant wishes at any time to withdraw his appeal he must do so by notice informing the Secretary of State or the Welsh Ministers and he must send a copy of the notice to the Agency¹¹.

Within 14 days of receipt of the copy of the notice of appeal, the Agency must give notice¹² of the appeal to the prescribed persons¹³ and must, within 14 days of sending such a notice, notify the Secretary of State or the Welsh Ministers of the name and address of every person who was sent such a notice in relation to the appeal and the date on which it was sent¹⁴. Where an appeal is withdrawn after such a notice has been sent, the Agency must inform every person who was sent such a notice in relation to the appeal¹⁵.

Where the appellant informs the Secretary of State or the Welsh Ministers that he wishes the appeal to be disposed of on the basis of written representations, the Agency must submit any written representations to the Secretary of State or the Welsh Ministers within the prescribed time¹⁶. Where either party to the appeal submits any representations to the Secretary of State or the Welsh Ministers, that party must at the same time send a copy to the other party¹⁷. The appellant must make any further representations by way of reply not later than 14 days after receiving the Agency's representations¹⁸. The Secretary of State or the Welsh Ministers must send to the appellant and the Agency copies of any representations made to him by persons who have received notice of the appeal¹⁹ and must allow them each a period of 14 days from the date of the receipt of those copies in which to make representations thereon²⁰.

If either party to the appeal so requests, or if the Secretary of State or the Welsh Ministers so decide, an appeal must be, or must continue, in the form of a hearing, which may, if the person hearing the appeal so decides, be held, or held to any extent, in private²¹. The Secretary of State or the Welsh Ministers must give the appellant and the Agency at least 28 days' notice²² of the date, time and place fixed for a hearing in relation to an appeal²³ and, in the case of a hearing which is to be held wholly or partly in public, must, at least 21 days before the date fixed for the hearing, publish a copy of the notice so given in a newspaper circulating in the locality which he or they consider may be affected by any matter which falls to be determined

in relation to the appeal and serve a copy of that notice on every person who has made representations or objections in writing to the Secretary of State or to the Welsh Ministers in relation to the appeal²⁴. The Secretary of State or the Welsh Ministers may vary the date fixed for the hearing²⁵ or the time or place for holding it²⁶.

The persons entitled to be heard at a hearing are the appellant, the Agency, and any person required²⁷ to be notified of the appeal²⁸, but nothing in this provision prevents the person appointed to conduct the hearing of the appeal from permitting any other person to be heard at the hearing and that permission must not be unreasonably withheld²⁹. After the conclusion of a hearing, the person appointed to conduct the hearing must, unless he was appointed under the Secretary of State's or the Welsh Ministers' powers of delegation³⁰, make a report in writing to the Secretary of State or the Welsh Ministers which must include his conclusions and his recommendations or his reasons for not making any recommendations³¹.

On determining an appeal against a decision of the Agency in respect of a consent³², other than an appeal against the service of an enforcement notice³³, the Secretary of State or the Welsh Ministers may:

- 409 (1) affirm the decision;
- 410 (2) where the decision was a refusal to grant a consent or a variation of consent, direct the Agency to grant or vary it, as the case may be;
- 411 (3) where the decision was as to the conditions of a consent, quash all or any of those conditions;
- 412 (4) where the decision was to revoke a consent, quash the decision;
- 413 (5) where the decision relates to a specified review period³⁴, modify any provisions specifying that period; and
- 414 (6) where he or they exercise any of the powers in heads (2) to (4) above, give directions as to the conditions to which the consent is to be subject³⁵.

On the determination of an appeal against the service of an enforcement notice, the Secretary of State or the Welsh Ministers may either quash or affirm the enforcement notice and, if he or they affirm it, may do so either in its original form or with such modifications as he or they may in the circumstances think fit³⁶.

The Secretary of State or the Welsh Ministers must notify the appellant in writing of his or their determination of the appeal and must provide him with a copy of any report by the person hearing the appeal³⁷. The Secretary of State or the Welsh Ministers must at the same time send a copy of those documents to the Agency and to any persons required to be notified of the appeal³⁸ and a copy of his or their determination of the appeal to any other person who made representations to him or to the Welsh Ministers and, if a hearing was held, to any other person who made representations in relation to the appeal at the hearing³⁹.

1 See the Environment Act 1995 s 114; and PARA 65. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Water Resources Act 1991 s 91(2A) (s 91(2A)-(2K) added by the Environment Act 1995 Sch 22 para 143(3)).

3 Water Resources Act 1991 s 91(2K) (as added: see note 2). In particular such regulations may make provision as to the period within which and the manner in which appeals are to be brought and as to the manner in which they are to be considered: s 91(2K)(a), (b) (as so added). In exercise of the power so conferred, the Secretary of State has made the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, regs 8-13: see the text and notes 5-39.

4 Water Resources Act 1991 s 91(2B) (as added: see note 2).

5 le under the Water Resources Act 1991 s 91 (see PARA 311) or s 191B(5) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 270): Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 8(1).

6 Notice of appeal must be given: (1) in the case of an appeal against the revocation of a consent, before the revocation takes effect; (2) in the case of an appeal against an enforcement notice, before the expiry of the period of 21 days beginning with the date on which the enforcement notice is received; (3) in the case of an appeal against a determination under the Water Resources Act 1991 s 191B(2) or (4) (exclusion from registers of certain confidential information) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 270) that information is not commercially confidential, before the expiry of the period of 21 days beginning with the date on which the appellant is notified of the determination; and (4) in any other case, before the expiry of the period of three months beginning with the date on which the appellant is notified of the decision which is the subject matter of the appeal, or, if the Water Resources Act 1991 s 88(2), Sch 10 para 3(2) (failure to determine application within four months or longer period agreed with applicant) (see PARA 302) applies, the date on which the applicable period thereunder expires: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 9(1). The Secretary of State or the Welsh Ministers may allow notice of appeal to be given after the expiry of the relevant period, but this does not apply in the case of an appeal against (a) a decision to revoke a discharge consent; (b) a decision to modify the conditions of any such consent; (c) a decision to provide that any such consent which was unconditional is to be subject to conditions; (d) a determination under the Water Resources Act 1991 s 191B(2) or (4) that information is not commercially confidential: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 9(2), (3).

7 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 8(1), (2).

8 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 8(3).

9 As to the Environment Agency see PARA 68 et seq; and as to its general pollution control functions see PARA 75.

10 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 8(4).

11 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 8(5).

12 The notice must (1) inform the person on whom it is served that an appeal to the Secretary of State or the Welsh Ministers has been made; and (2) state (a) that any representations made to the Secretary of State or the Welsh Ministers in writing by the recipient of the notice will be considered by him or by them if they are made within the period of 21 days beginning with the date of receipt of the notice; (b) that copies of the representations will be sent to the appellant and the Environment Agency; (c) that copies of the representations will be placed on registers maintained under the Water Resources Act 1991 s 190 (pollution control registers) (see PARA 343); (d) that any person who makes any such representations will be informed about the hearing of the appeal if there is to be a hearing held wholly or partly in public; and must be accompanied by a notice of appeal: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 10(2). Regulation 10 does not, however, apply in relation to an appeal under the Water Resources Act 1991 s 91(1)(h) (appeals against enforcement notices) or s 191B(5) (appeals against determinations that information is not commercially confidential): Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 10(5).

13 In the case of an appeal against a decision (1) to revoke a discharge consent; or (2) to modify the conditions of any such consent or to provide that any such consent which was unconditional is to be subject to conditions, unless in either case the decision was made in response to an application for a variation, the Environment Agency must give notice of the appeal to any person who appears to it likely to have a particular interest in its subject matter: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 10(1)(a). In any other case the Agency must give notice of the appeal to any person who made representations or objections to the Agency with respect to the grant or variation of the consent, and to any person who was required to be consulted in relation to the grant or variation of the consent under the Water Resources Act 1991 Sch 10 para 2(1) or 6(4) pursuant to the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 5(1) (see PARA 301) or Sch 1 para 3(1) (see PARA 304): reg 10(1)(b). This provision does not, however, apply to certain appeals: see note 12.

14 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 10(3). This provision does not, however, apply to certain appeals: see note 12.

15 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 10(4). This provision does not, however, apply to certain appeals: see note 12.

16 See the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 11(1). The prescribed time is (1) in the case of an appeal against an enforcement notice, not later than 14 days;

and (2) in all other cases, not later than 28 days, after receiving a copy of the notice of appeal in accordance with reg 8(4): reg 11(1). The Secretary of State or the Welsh Ministers may in any particular case set shorter or longer time limits than those prescribed and allow the parties to make additional representations: see reg 11(4). Any representations made by a party must be date with the date on which they are submitted to the Secretary of State or the Welsh Ministers: reg 11(5).

17 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 11(6).

18 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 11(2). See also note 16.

19 *Ie* under the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 10: see notes 12-13.

20 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 11(3). See also note 16.

21 Water Resources Act 1991 s 91(2C) (as added: see note 2).

22 The appellant and the Environment Agency may agree to a shorter period of notice: see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 12(1).

23 *Ie* an appeal under the Water Resources Act 1991 s 91 (see PARA 311) or s 191B(5) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 270).

24 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 12(1), (2). These requirements to publish and serve notice do not, however, apply in the case of a hearing in relation to an appeal under the Water Resources Act 1991 s 191B(5): Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 12(5).

25 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 12(3). Regulation 12(1), (2) applies, with necessary modifications, to the variation of the date: reg 12(3).

26 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 12(4). The Secretary of State or the Welsh Ministers must give such notice of any such variation as appears to him or to them to be reasonable: reg 12(4).

27 *Ie* under the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 10(1)(b)(ii): see note 12 head (2)(b).

28 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 12(6).

29 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 12(7).

30 *Ie* under the Environment Act 1995 s 114(1)(a): see PARA 65.

31 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 12(8).

32 *Ie* an appeal brought by virtue of any of the Water Resources Act 1991 s 91(1)(a)-(g): see PARA 311 at heads (1)-(7) in the text.

33 *Ie* an appeal brought by virtue of the Water Resources Act 1991 s 91(1)(h): see PARA 311 at head (8) in the text. As to the meaning of 'enforcement notice' see PARA 310.

34 *Ie* a period specified for the purposes of the Water Resources Act 1991 Sch 10 para 8(1) or (2): see PARA 306.

35 Water Resources Act 1991 s 91(2D) (as added: see note 2).

36 Water Resources Act 1991 s 91(2E) (as added: see note 2).

37 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 13(1).

38 See note 27.

39 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 13(2).

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(iv) Other Powers to Prevent and Control Pollution

A. PRECAUTIONS AGAINST POLLUTION

313. Requirements to take precautions against pollution.

The Secretary of State or, in certain cases, the Welsh Ministers¹, may by regulations make provision for:

- 415 (1) prohibiting a person from having custody or control of any poisonous, noxious or polluting matter unless prescribed² works and precautions and other steps have been taken for the purpose of preventing or controlling the entry of the matter into any controlled waters³;
- 416 (2) requiring a person who already has custody or control of, or makes use of, any such matter to carry out such works for that purpose and to take such precautions and other steps for that purpose as may be prescribed⁴.

Without prejudice to the generality of this power, such regulations may confer power on the Environment Agency⁵ to determine, for the purposes of the regulations, the circumstances in which a person is required to carry out works or take any precautions or other steps, and to impose the requirement and to specify or describe the work, precautions or other steps which that person is required to carry out or take by notice to him⁶. Subject to the Secretary of State's or the Welsh Ministers' power to delegate appeals⁷, the regulations may also provide for appeals to him or to them against notices served by the Agency in pursuance of provision so made⁸ and may provide that a contravention of the regulations is to be an offence⁹.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 'Prescribed' means prescribed by regulations made by the Secretary of State: see the Water Resources Act 1991 s 221(1). See note 4.

3 As to the meaning of 'controlled waters' see PARA 289.

4 Water Resources Act 1991 s 92(1) (amended by the Environment Act 1995 Sch 22 para 128). In the exercise of the power so conferred, the Secretary of State has made the Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954 (amended by SI 2007/3538). Additionally, by virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 para 1(1), (2), the Control of Pollution (Sludge, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324 (amended by SI 1997/547) have effect as if so made. See PARAS 314-315.

5 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

6 Water Resources Act 1991 s 92(2)(a) (s 92 amended by the Environment Act 1995 Sch 22 para 128). In determining when and how the Environment Agency should exercise this power, it must take into account whether there has been or is likely to be any contravention of a code of good agricultural practice: see the Water Resources Act 1991 s 97(2); and PARA 320. As to the meaning of 'contravention' see **WATER AND WATERWAYS** vol 100 (2009) PARA 20 note 5.

7 The Water Resources Act 1991 s 92 is subject to the Environment Act 1995 s 114 (delegation or reference of appeals etc) (see PARA 65): Water Resources Act 1991 s 92(3) (added by the Environment Act 1995 Sch 22 para 144).

8 Water Resources Act 1991 s 92(2)(b) (as amended: see note 6).

9 Water Resources Act 1991 s 92(2)(c). The maximum penalties for any such offence are not to exceed the penalties specified in s 85(6) (see PARA 291): s 92(2)(c).

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314. Control of pollution from oil storage.

Subject to certain exceptions¹, the following provisions apply to the storage of oil² on any premises in England³. Oil must be stored in a container⁴ which is of sufficient strength and structural integrity to ensure that it is unlikely to burst or leak in its ordinary use⁵; and the container must be situated within a secondary containment system⁶ which satisfies the prescribed requirements⁷. Any fixed tank used for storing oil, and any mobile bowser used for storing oil, must satisfy the relevant requirements prescribed in that regard⁸.

The above provisions do not apply until 1 September 2005 to the storage of oil in any container if the container was used for that purpose on any premises before 1 September 2001⁹, except that if the container or, if there is more than one container within the secondary containment system, any of them is situated less than:

- 417 (1) 10 metres away from any inland freshwaters¹⁰ or coastal waters¹¹; or
- 418 (2) 50 metres away from a well or borehole,

they apply from 1 September 2003¹². In a transitional case¹³ where the Environment Agency¹⁴ considers that there is a significant risk of pollution of controlled waters¹⁵ from the entry of the oil in question into those waters if steps are not immediately taken to minimise that risk, the Agency may serve notice¹⁶ on the person having custody or control of that oil requiring him to carry out such works, take such precautions or take such other steps as, in the opinion of the Agency, are appropriate for minimising that risk having regard to the prescribed requirements¹⁷. The notice must:

- 419 (a) specify or describe the works, precautions or other steps which the person is required to carry out or take;
- 420 (b) state the period within which any such requirement is to be complied with¹⁸; and
- 421 (c) inform him of his rights¹⁹ of appeal²⁰.

The Agency may at any time:

- 422 (i) withdraw the notice;
- 423 (ii) extend the period for compliance with any requirement of the notice²¹;
- 424 (iii) with the consent of the person on whom it is served, modify the requirements of the notice,

and must do so if so directed²² by the Secretary of State²³.

A person served with such a notice may within the period of 28 days beginning with the day on which the notice is served, or within such longer period as the Secretary of State may allow, appeal to the Secretary of State against the notice²⁴. An appeal must be made by the appellant serving notice on the Secretary of State and the notice must contain or be accompanied by a statement of the appellant's reasons for appealing and the matters which he wishes the

Secretary of State to take into account in determining the appeal²⁵. Before determining an appeal the Secretary of State must take into account any written representations of the appellant or the Agency and, if requested to do so by the appellant or the Agency, afford them the opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose²⁶. On determining an appeal the Secretary of State may direct the Agency to withdraw the notice, modify any of its requirements, extend the period for compliance²⁷ or dismiss the appeal²⁸.

A person who has custody or control of any oil in circumstances in which there is a contravention of any provision of the prescribed requirements²⁹ or the requirements of a notice to minimise the risk of pollution³⁰ is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine³¹.

At the date at which this title states the law, there appeared to be no equivalent provisions applying to the storage of oil on premises in Wales.

1 le subject to the Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 2(2): see note 3.

2 For these purposes, 'oil' means any kind of oil and includes petrol: Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 1(2).

3 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, regs 1(1), 2(1). The 2001 Regulations do not apply to the storage of oil (1) if the oil is waste oil within the meaning of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1) (see PARA 623); (2) in any container which is situated in a building or wholly underground; (3) in any container with a storage capacity of 200 litres or less; (4) on any premises used (a) wholly or mainly as a private dwelling if the storage capacity of the container in which it is stored is 3,500 litres or less; (b) for refining oil; or (c) for the onward distribution of oil to other places; or (5) on any farm if the oil is for use in connection with agriculture within the meaning of the Agriculture Act 1947: Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 2(2) (amended by SI 2007/3538); and see note 4.

4 For these purposes, 'container' means a fixed tank, a drum or a mobile bowser or (even if not connected to fixed pipework) an intermediate bulk container; 'drum' means an oil drum or similar container used for storing oil; and 'fixed tank' includes an intermediate bulk container which is connected to fixed pipework: Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 1(2).

5 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 3(1).

6 For these purposes, 'secondary containment system' means a drip tray, an area surrounded by a bund or any other system for preventing oil which is no longer in its container from escaping from the place where it is stored: Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 1(2).

7 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 3(2). The prescribed requirements are that: (1) subject to reg 3(5), it must have a capacity of not less than 110% of the container's storage capacity or, if there is more than one container within the system, of not less than 110% of the largest container's storage capacity or 25% of their aggregate storage capacity, whichever is the greater; (2) it must be positioned, or other steps must be taken, so as to minimise any risk of damage by impact so far as is reasonably practicable; (3) its base and walls must be impermeable to water and oil; (4) its base and walls must not be penetrated by any valve, pipe or other opening which is used for draining the system; and (5) if any fill pipe, or draw off pipe, penetrates its base or any of its walls, the junction of the pipe with the base or walls must be adequately sealed to prevent oil escaping from the system: reg 3(2)(a)-(e). Any valve, filter, sight gauge, vent pipe or other equipment ancillary to the container (other than a fill pipe or draw off pipe or, if the oil has a flashpoint of less than 32 degrees C, a pump) must be situated within the secondary containment system: reg 3(3). Where a fill pipe is not within the secondary containment system, a drip tray must be used to catch any oil spilled when the container is being filled with oil: reg 3(4). Where any drum is used for the storage of oil in conjunction with a drip tray as the secondary containment system, it is sufficient if the tray has a capacity of not less than 25% of (a) the drum's storage capacity; or (b) if there is more than one drum used at the same time with the tray, the aggregate storage capacity of the drums: reg 3(5).

8 See the Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, regs 4, 5.

9 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 6(1).

10 As to the meaning of 'inland freshwaters' see PARA 289 at head (3) in the text.

- 11 As to the meaning of 'coastal waters' see PARA 289 at head (2) in the text.
- 12 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 6(2).
- 13 Ie a case where the Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2953, reg 6(1) or (2) applies.
- 14 As to the Environment Agency see PARA 68 et seq.
- 15 As to the meaning of 'controlled waters' see PARA 289.
- 16 As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.
- 17 See the Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 7(1).
- 18 The period for compliance must be such period as is reasonable in the circumstances and must not in any case be less than 28 days: Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 7(3). If a notice under reg 7 is not complied with in relation to any container by the date specified in the notice, regs 1-6(2) apply from whichever is the latest of the following: (1) the date specified in the notice; (2) if the period for compliance is extended under reg 7(4) (see head (ii) in the text), the expiry of the extension; (3) if there is an appeal against the notice, the date on which the appeal is determined or withdrawn: reg 6(3).
- 19 Ie under the Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 8.
- 20 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 7(2).
- 21 The period for compliance with a notice under the Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 7 must, subject to any direction under reg 7(4), be extended so that it expires on the date on which the Secretary of State determines the appeal or, if the appeal is withdrawn, the date on which it is withdrawn: reg 8(5).
- 22 Ie under the Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 8(4).
- 23 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2953, reg 7(4). As to the Secretary of State see PARA 58.
- 24 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 8(1).
- 25 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 8(2).
- 26 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 8(3).
- 27 See note 21.
- 28 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 8(4).
- 29 Ie a contravention of the Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, regs 3-5.
- 30 Ie a notice under the Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 7.
- 31 Control of Pollution (Oil Storage) (England) Regulations 2001, SI 2001/2954, reg 9. As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to offences by bodies corporate see **WATER AND WATERWAYS** vol 100 (2009) PARA 185.

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315. Control of pollution from silage, slurry and agricultural fuel oil.

Subject to certain exceptions¹, no person may have custody or control of any crop which is being made into silage or any silage which is being stored unless:

- 425 (1) it is kept in a silo² in relation to which the prescribed requirements³ are satisfied or which is an exempt structure⁴; or
- 426 (2) it is compressed in the form of bales which are wrapped and sealed within impermeable membranes, or are enclosed in impermeable bags, and are stored at least 10 metres from any inland freshwaters⁵ or coastal waters⁶ which effluent⁷ escaping from the bales could enter; or
- 427 (3) it is a crop being made into field silage⁸ or silage which is being stored on open land and:
 - 11 11. (a) the Environment Agency⁹ is given notice¹⁰ of the place where the silage is to be made or stored at least 14 days before it is first used for that purpose; and
 - 12. (b) the place is at least 10 metres from any inland freshwaters or coastal waters, and at least the specified distance¹¹ from any protected water supply source¹², which silage effluent¹³ could enter if it escaped¹⁴.

No person having custody or control of any crop which is being, or has been, made into silage in the manner described in head (2) above may open or remove the wrapping of any bales unless he does so at a place at least 10 metres from any inland freshwaters or coastal waters which silage effluent could enter as a result¹⁵.

A person having custody or control of slurry¹⁶ must store it only in a slurry storage system¹⁷ in relation to which the prescribed requirements are satisfied¹⁸ or which is an exempt structure, unless it is being stored temporarily in a tanker with a capacity not exceeding 18,000 litres which is used for transporting slurry on roads or about a farm¹⁹.

No person may have custody or control of fuel oil²⁰ on a farm, if the total quantity stored exceeds 1,500 litres²¹, unless it is stored:

- 428 (i) in a fuel storage tank within a storage area in relation to which the prescribed requirements²² are satisfied;
- 429 (ii) in drums within such a storage area;
- 430 (iii) temporarily in a tanker used for transporting fuel oil on roads or about the farm;
- 431 (iv) in a fuel storage tank which is an exempt structure; or
- 432 (v) in an underground fuel storage tank²³.

A person who contravenes any of these provisions is guilty of an offence and liable to a fine²⁴.

The Agency may serve notice on any person, who has custody or control of any relevant substance²⁵ in circumstances in which the relevant regulations²⁶ apply, requiring him to carry

out such works, take such precautions or such other steps as are specified in the notice and which, in the opinion of the Agency, are appropriate, having regard to any requirements of those regulations in relation to that substance, for reducing to a minimum any significant risk of pollution of controlled waters²⁷ arising from the custody or control of that substance²⁸. The notice must specify or describe the works, precautions or other steps which the person is required to carry out or take, state the period for compliance, which must be such as is reasonable in the circumstances and in any case not less than 28 days²⁹, and inform him of the right of appeal³⁰ in relation to the notice³¹. The Agency may at any time withdraw the notice, or extend the period for compliance with any of its requirements or modify those requirements with the consent of the person on whom it was served³². On determining an appeal³³ the Secretary of State has or, in relation to Wales, the Welsh Ministers have power to direct the Agency to withdraw the notice, modify any of its requirements or extend the period for compliance³⁴ and the Agency must comply with the direction³⁵.

A person who proposes to have custody or control of any relevant substance which is to be kept or stored on a farm in a silo, slurry storage system or fuel storage area constructed, substantially enlarged or substantially reconstructed on or after 1 September 1991 must serve notice on the Agency specifying the type of structure to be used and its location at least 14 days before it is to be used for such keeping or storage³⁶. A person who contravenes this provision is guilty of an offence and liable to a fine³⁷.

1 le subject to the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 3(1A): see note 14.

2 'Silo' means any structure used for making or storing silage: Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 2 (definition substituted by SI 1997/547).

3 le the requirements of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, Sch 1: see Sch 1 paras 1-9 (amended by SI 1997/547) (requirements as to design and construction of silos). The Environment Agency may by notice relax the requirements of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 3(1)(a) (see head (1) in the text) subject to such conditions (if any) as are specified in the notice where a silo is used solely for the purpose of storing silage made elsewhere if it is satisfied that there is no significant risk of pollution of controlled waters from that use of the silo: reg 3(1B) (reg (1A)-(1D), (3) added by SI 1997/547).

4 A silo, slurry system or fuel storage tank is for the time being an exempt structure if (1) it was used before 1 March 1991 for the purpose of making silage, storing slurry or, as the case may be, storing fuel oil; (2) where it was not so used before that date, it was constructed before that date for that use; or (3) a contract for its construction was entered into before that date or its construction was commenced before that date, and in either case was completed before 1 September 1991, and in all cases provided it has not ceased to be an exempt structure by virtue of (a) any requirement of a works notice under the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 9 (see the text and notes 17-29) not having been complied with; or (b) its having been substantially enlarged or substantially reconstructed at any time on or after 1 March 1991, unless a contract for the work was entered into or the work was commenced before that date, and in either case the work was completed before 1 September 1991: Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, regs 6, 8(1). Any reference in reg 8(1) to the period stated in a notice is to that period as extended if it has been extended under reg 9(4) or by virtue of reg 10(5); and any reference in regs 9(4), 10(5) to a requirement of a notice is to that requirement as modified if it has been modified under reg 9(4): reg 8(3) (amended by SI 1997/547). 'Construct' includes install and cognate expressions are to be construed accordingly: Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 2. As to the meaning of 'slurry storage system' see note 17.

5 As to the meaning of 'inland freshwaters' see PARA 289 at head (3) in the text.

6 As to the meaning of 'coastal waters' see PARA 289 at head (2) in the text.

7 As to the meaning of 'effluent' see **WATER AND WATERWAYS** vol 100 (2009) PARA 262 note 31.

8 For these purposes, 'field silage' means silage made on open land by a method which is different from that described in the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 3(1)(b) (see head (2) in the text): reg 3(3) (as added: see note 3).

9 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

10 As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

11 The specified distance is 50 metres from the nearest relevant abstraction point; and 'relevant abstraction' means the abstraction of water from inland freshwaters or ground waters for use for (1) human consumption or other domestic purposes within the meaning of the Water Industry Act 1991 s 218 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 334); or (2) manufacturing food or drink for human consumption: see the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 3(1D), (3) (as added: see note 3).

12 A water supply source is a protected water supply source if (1) any relevant abstraction from the source is licensed under the Water Resources Act 1991 Pt II (ss 20-81) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 227 et seq); or (2) any relevant abstraction from the source is not so licensed but the person making or storing the silage was aware of the source's location before the making of the silage began or, in the case of silage made elsewhere, before it was stored on the land in question; and 'water supply source' means inland freshwaters or ground waters from which any relevant abstraction is made or licensed to be made: Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 3(1C), (3) (as added: see note 3).

13 For these purposes, 'silage effluent' means effluent from silage or a crop being made into silage: Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 2 (definition substituted by SI 1997/547).

14 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 3(1) (reg 3(1), (2) amended by SI 1997/547). The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 3(1) does not apply to silage whilst it is stored temporarily in a container, trailer or vehicle in connection with its transport about the farm or elsewhere: reg 3(1A) (as added: see note 3).

15 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 3(2) (as amended: see note 14).

16 'Slurry' means (1) excreta produced by livestock whilst in a yard or building; or (2) a mixture consisting wholly or mainly of such excreta, bedding, rainwater and washings from a building or yard used by livestock or any combination of these, of a consistency that allows it to be pumped or discharged by gravity at any stage in the handling process: Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 2. 'Livestock' means any animals kept for the production of food or wool or any birds kept for the production of food: reg 2.

17 'Slurry storage system' means (1) a slurry storage tank; (2) any reception pit and any effluent tank used in connection with the slurry storage tank; and (3) any channels and pipes used in connection with the slurry storage tank, any reception pit or any effluent tank: Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 2. 'Slurry storage tank' includes a lagoon, pit (other than a reception pit) or tower used for the storage of slurry; and 'reception pit' means a pit used for the collection of slurry before it is transferred into a slurry storage tank or for the collection of slurry discharged from such a tank: reg 2.

18 In the requirements of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 4(1), Sch 2: see Sch 2 paras 1-11 (amended by SI 1997/547).

19 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 4(1), (2).

20 'Fuel oil' means oil intended for use as a fuel for the production of heat or power but does not include oil intended for use exclusively as a fuel for heating a farmhouse or other residential premises on a farm and stored separately from other oil: Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 2. As to the storage of oil in premises in England otherwise than on a farm see PARA 314.

21 See the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 5(2).

22 In the requirements of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 5(1)(a), Sch 3: see Sch 3 paras 1-7 (amended by SI 1997/547).

23 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 5(1).

24 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 12(1). Such a person is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: see reg 12(1). As to the statutory maximum see **SENTENCING AND DISPOSITION OF**

OFFENDERS vol 92 (2010) PARA 140. As to offences by bodies corporate see **WATER AND WATERWAYS** vol 100 (2009) PARA 185. As to the time limit for summary proceedings see PARA 291 note 18.

25 For these purposes, 'relevant substance' means slurry, fuel oil, a crop being made into silage or silage which is being stored: Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 2 (definition substituted by SI 1997/547).

26 Ie the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324.

27 As to the meaning of 'controlled waters' see PARA 289.

28 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 9(1) (substituted by SI 1997/547).

29 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 9(3).

30 Ie under the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 10. The appeal must be made within 28 days of service of the notice, by notice served on the Secretary of State or, in relation to Wales, on the Welsh Ministers together with the grounds of appeal: reg 10(1), (2). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

31 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 9(2).

32 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 9(4)(a)-(c) (amended by virtue of the Environment Act 1995 Sch 22 para 233(1)).

33 As to the power to delegate appeals see the Environment Act 1995 s 114; and PARA 65.

34 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 10(4), (5) (as amended: see note 32).

35 See the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 9(4) (as amended: see note 32).

36 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 11 (as amended: see note 32).

37 Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, SI 1991/324, reg 12(2). Such a person is liable on summary conviction to a fine not exceeding level 2 on the standard scale: see reg 12(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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B. WATER PROTECTION ZONES

316. Power to designate water protection zones.

Where the appropriate national authority¹ considers that either or both of the relevant requirements² is satisfied in relation to any area, it may by order³ make provision designating that area as a water protection zone and regulating the carrying on in that zone of such activities as may be specified or described in the order⁴.

Without prejudice to the generality of this power, such an order may:

- 433 (1) confer power on the Environment Agency to determine for the purposes of the order: (a) the circumstances in which the carrying on of any activities is prohibited or restricted; (b) the circumstances in which any requirement to take steps is imposed on persons who carry on activities; and (c) the activities to which any such prohibition or restriction or any requirement (as the case may be) applies⁵;
- 434 (2) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of the Agency or in contravention of any conditions subject to which any such consent is given⁶;
- 435 (3) provide that a contravention⁷ of a prohibition or restriction contained in the order or of a condition of a consent given for the purpose of any such prohibition or restriction or a failure to comply with a requirement to take steps contained in the order is to be an offence⁸;
- 436 (4) provide⁹ for anything falling to be determined under the order by the Agency to be determined in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be specified in the order¹⁰;
- 437 (5) make different provision for different cases, including different provision in relation to different persons, circumstances or localities¹¹; and
- 438 (6) contain such supplemental, consequential and transitional provision as the appropriate national authority considers appropriate¹².

For the purposes of any such orders which require the Agency's consent to the carrying on of any activities, the Secretary of State or the Welsh Ministers may make provision by regulations with respect to:

- 439 (i) applications for any such consent;
- 440 (ii) the conditions of any such consent;
- 441 (iii) the revocation or variation of any such consent;
- 442 (iv) appeals¹³ against determinations on any such application;
- 443 (v) the exercise by the Secretary of State or the Welsh Ministers of any power conferred on the Agency by the orders;
- 444 (vi) the imposition of charges where such an application has been made, such a consent has been given or anything has been done in pursuance of any such consent¹⁴; and
- 445 (vii) the registration of any such consent¹⁵.

1 For these purposes, 'appropriate national authority' means (1) in relation to England, the Secretary of State (see PARA 58); (2) in relation to Wales, the Welsh Ministers (see PARA 59): Water Resources Act 1991 s 93(5) (substituted by SI 2009/3104). 'England' includes the territorial sea adjacent to England not forming any part of Wales and 'Wales' has the meaning given by the Government of Wales Act 2006 s 158(1) (see also PARA 1 note 2): Water Resources Act 1991 s 93(7) (added by SI 2009/3104).

2 Ie either or both of the Water Resources Act 1991 s 93(2) or s 93(2A): see below.

For these purposes (ie the purposes of s 93(1): see the text and notes 1-7) s 93(2) is satisfied in relation to any area if it is appropriate, with a view to preventing or controlling the entry of any poisonous, noxious or polluting matter into controlled waters, to prohibit or restrict the carrying on in that area of activities which the appropriate national authority considers are likely to result in the pollution of any such waters: s 93(2) (amended by SI 2009/3104). As to the meaning of 'poisonous, noxious, or polluting' see PARA 291 note 4. As to the meaning of 'controlled waters' see PARA 289.

For the same purposes (see above), the Water Resources Act 1991 s 93(2A) is satisfied in relation to any area if it is appropriate, with a view to preventing or limiting any harm that is being or is likely to be caused to controlled waters, to regulate the carrying on in that area of activities which the appropriate national authority considers are likely to result in such harm: s 93(2A) (s 93(2A)-(2C) added by SI 2009/3104). 'Harm' means any adverse impact on the condition of any hydromorphological quality element affecting the controlled waters that would be likely to prevent the achievement of any environmental objectives applicable to those waters (whether by itself or in combination with other factors), other than an adverse impact caused by the entry into controlled waters of any poisonous, noxious or polluting matter: Water Resources Act 1991 s 93(2B) (as so added). 'Environmental objectives' and 'hydromorphological quality element' have the same meanings as in the Water Framework Directive (ie European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy: see generally PARA 23): Water Resources Act 1991 s 93(2C) (as so added).

3 The power to make such an order is exercisable by statutory instrument subject (1) in the case of an order by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament; and (2) in the case of an order made by the Welsh Ministers, to annulment in pursuance of a resolution of the National Assembly for Wales, but neither the Secretary of State nor the Welsh Ministers are able to make such an order except on an application made by the Environment Agency in accordance with the Water Resources Act 1991 Sch 11 (see PARA 317) and otherwise in accordance with that Schedule: s 93(6) (added by SI 2009/3104). As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

4 Water Resources Act 1991 s 93(1) (substituted by SI 2009/3104). At the date at which this title states the law, no such orders had been made.

An order under the Water Resources Act 1991 s 93 may regulate activities carried on in a water protection zone by (1) prohibiting or restricting the carrying on of those activities in the zone; or (2) imposing requirements on persons who carry on those activities in the zone to take such steps as may be specified or described in the order: s 93(1A) (s 93(1A), (1B) added by SI 2009/3104). The power under head (2) above is exercisable only for the purpose of enabling the United Kingdom to comply with its obligations under the Water Framework Directive (see note 2) in relation to any applicable environmental objectives: Water Resources Act 1991 s 93(1B) (as so added). As to the meaning of 'United Kingdom' see PARA 1 note 2.

5 Water Resources Act 1991 s 93(4)(a) (substituted by SI 2009/3104).

6 Water Resources Act 1991 s 93(4)(b) (s 93(4)(b), (d) amended by the Environment Act 1995 Sch 22 para 128).

7 As to the meaning of 'contravention' see **WATER AND WATERWAYS** vol 100 (2009) PARA 20 note 5.

8 Water Resources Act 1991 s 93(4)(c).(substituted by SI 2009/3104).

The maximum penalties for an offence created by the Water Resources Act 1991 s 93(4)(c) must not exceed: (1) on summary conviction, a term of imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum (or both); and (2) on conviction on indictment, imprisonment for a term not exceeding two years or a fine (or both): s 93(4A) (added by SI 2009/3104). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

9 Ie subject to any regulations under the Water Resources Act 1991 s 96: see heads (i)-(vii) in the text.

10 Water Resources Act 1991 s 93(4)(d) (as amended: see note 6).

11 Water Resources Act 1991 s 93(4)(e).

12 Water Resources Act 1991 s 93(4)(f).

13 This provision is subject to the Environment Act 1995 s 114 (delegation of appeals etc) (see PARA 65): Water Resources Act 1991 s 96(4) (added by the Environment Act 1995 Sch 22 para 145).

14 This power now seems superfluous in view of the Environment Act 1995 s 43 (Environment Agency's incidental power to impose charges) (see PARA 82), but has not been repealed.

15 Water Resources Act 1991 s 96(1) (amended by the Environment Act 1995 Sch 22 para 128). Without prejudice to the generality of the powers so conferred, such regulations may apply, with or without modifications, any enactment having effect in relation to consents under Pt III Ch II (ss 85-91) (see PARA 291 et seq): s 96(3). At the date at which this title states the law, no such regulations had been made. As to the meaning of 'modifications' see **WATER AND WATERWAYS** vol 100 (2009) PARA 141 note 20. As to the meaning of 'enactment' see **WATER AND WATERWAYS** vol 100 (2009) PARA 14 note 31.

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317. Procedure on making water protection zone order.

Where the Environment Agency¹ applies for a water protection zone order², it must submit to the Secretary of State or the Welsh Ministers³ a draft of the order applied for and publish a notice with respect to the application, stating the general effect of the order, at least once in each of two successive weeks in one or more newspapers circulating in the locality proposed to be designated as a water protection zone by the order⁴. The notice must also specify a place where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge, at all reasonable times, during the period of 28 days beginning with the date of the first publication of the notice, and state that any person may, within that period, by notice⁵ to the Secretary of State or to the Welsh Ministers object to the making of the order⁶.

Not later than the date on which the notice stating the general effect of the order is published, the Agency must serve a copy of it on every local authority⁷ and water undertaker⁸ whose area includes the whole or any part of that locality, and must publish a notice in the London Gazette which states that the draft order has been submitted to the Secretary of State or the Welsh Ministers⁹.

Where the Agency has applied for such an order it must, at the request of any person and on payment by that person of such charge, if any, as the Agency may reasonably require, furnish that person with a copy of the draft order submitted to the Secretary of State or the Welsh Ministers¹⁰.

On an application for such an order, the Secretary of State or the Welsh Ministers may make the order¹¹ either in the terms of the draft order submitted to him or to them, or in those terms as modified in such manner as the Secretary of State or the Welsh Ministers think fit, or may refuse to make an order¹². The Secretary of State or the Welsh Ministers may not, however, make such a modification¹³ of a draft order submitted to him or to them as he or the Welsh Ministers consider is likely adversely to affect any persons unless satisfied that the Agency has given and published such additional notices, in such manner, as he or the Welsh Ministers may have required¹⁴. The Secretary of State or the Welsh Ministers may, if he or they consider it appropriate to do so, hold a local inquiry¹⁵ before making any order on the application¹⁶.

1 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 I.e an order under the Water Resources Act 1991 s 93: see PARA 316.

3 I.e to the appropriate national authority: see PARA 316. As to the Secretary of State see PARA 58. As to the Welsh Ministers see PARA 59.

4 Water Resources Act 1991 s 93(5), Sch 11 para 1(1)(a), (b), (2)(a) (Sch 11 amended by the Environment Act 1995 Sch 22 para 128).

5 As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

6 Water Resources Act 1991 Sch 11 para 1(2)(b), (c).

7 As to the meaning of 'local authority' see PARA 99.

- 8 As to the meaning of 'water undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 4.
- 9 Water Resources Act 1991 Sch 11 para 1(1)(c), (d)(i) (as amended: see note 4). The notice must also name every local authority on which a notice is required to be served, specify a place where a copy of the draft order and of any relevant map or plan may be inspected, and give the name of every newspaper in which the notice required by virtue of Sch 11 para 1(1)(b) was published and the date of an issue containing the notice: Sch 11 para 1(1)(ii)-(iv).
- 10 Water Resources Act 1991 Sch 11 para 2 (as amended: see note 4).
- 11 The order is made by statutory instrument: see PARA 316 note 4.
- 12 Water Resources Act 1991 Sch 11 para 3(1).
- 13 As to the meaning of 'modifications' see **WATER AND WATERWAYS** vol 100 (2009) PARA 141 note 20.
- 14 Water Resources Act 1991 Sch 11 para 3(2) (as amended: see note 4). Subject to this, and to the service of notices of the proposed modifications on such local authorities as appear to him or to them to be likely to be interested in it, the modifications that may be made by the Secretary of State or the Welsh Ministers of any draft order include any modification of the area designated by the draft order as a water protection zone: Sch 11 para 3(3).
- 15 Ie without prejudice to the Environment Act 1995 s 53 (inquiries and other hearings) (see PARA 89): Water Resources Act 1991 Sch 11 para 4 (amended by the Environment Act 1995 Sch 22 para 184).
- 16 Water Resources Act 1991 Sch 11 para 4 (as amended: see note 15).

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C. NITRATE VULNERABLE ZONES

318. Nitrate vulnerable zones; in general.

For the purpose of the designation and revision of designations of nitrate vulnerable zones¹, the Secretary of State or the Welsh Ministers² must, before 1 January 2013 and at least every four years subsequently³, monitor the nitrate concentration in freshwaters over a period of one year:

- 446 (1) at sampling stations that are representative of surface water at least monthly and more frequently during flood periods; and
- 447 (2) at sampling stations that are representative of the groundwater, at regular intervals⁴.

The Secretary of State or the Welsh Ministers must also keep under review the eutrophic⁵ state of fresh surface waters, estuarial and coastal waters⁶. Such monitoring must be carried out using the relevant reference methods of measurement⁷.

1 For these purposes, 'nitrate vulnerable zone' means (1) the areas marked as nitrate vulnerable zones on the maps marked 'Nitrate Vulnerable Zones (England 2008)' and deposited at the offices of the Secretary of State for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR, being areas of land that drain into polluted waters and that contribute to the pollution of those waters (see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 7); (2) the areas marked as nitrate vulnerable zones on the maps marked 'Nitrate Vulnerable Zones Index Map 2008' ('Parthau Perygl Nitradau Map Mynegai 2008') and deposited at the offices of the Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ, being areas of land that drain into polluted waters and that contribute to the pollution of those waters (see the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 7).

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Except for where the nitrate concentration in all previous samples taken for this purpose has been below 25 mg/l and no new factor likely to increase the nitrate content has appeared, in which case the monitoring programme need be repeated only every eight years: see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 11(2); and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 11(2).

4 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 11(2); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 11(2). The monitoring described in head (2) in the text must be done taking into account the provisions of EC Council Directive 98/83 (OJ L330, 05.12.98, p 32) on the water intended for human consumption: see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 11(2); and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 11(2).

As to panel findings etc see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, regs 8-10; and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, regs 8-10; as to limiting the application of organic manure see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, regs 12, 13 (reg 12 amended by SI 2009/3160); and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, regs 12, 13 (reg 12 amended by SI 2010/489); as to derogation see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, regs 13A-13F (added by SI 2009/3160) and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, regs 13A-13E (added by SI 2010/489); as to crop requirements see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, regs 14-17 (regs 15, 16 amended by SI 2009/3160); and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, regs 14-17 (reg 15, 16 amended by SI 2010/489); as to the spreading of nitrogen fertiliser see the Nitrate Pollution Prevention Regulations 2008, SI

2008/2349, regs 18-30 (regs 20, 22 substituted and reg 27 amended by SI 2009/3160); and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, regs 18-30 (reg 20, 22 substituted and reg 27 amended by SI 2010/489); as to the storage or organic manure see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, regs 31-34; and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, regs 31-34; as to calculations and records see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, regs 35-45 (reg 42 amended by SI 2009/3160) and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, regs 35-45 (reg 42 amended by SI 2010/489); and as to offences and enforcement see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, regs 48-50; and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, regs 48-50.

As to the application of the Conservation of Habitats and Species Regulations 2010, SI 2010/490, regs 61, 62 ('the assessment provisions') in relation to the granting of a derogation under the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, Pt 3A (regs 13A-13F) or the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, Pt 3A (regs 13A-13E) (see above), see the Conservation of Habitats and Species Regulations 2010, SI 2010/490, reg 101; and **OPEN SPACES AND COUNTRYSIDE**.

5 'Eutrophic' means water that is enriched by nitrogen compounds, causing an accelerated growth of algae and higher forms of plant life that produces an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned: Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 6 (substituted by SI 2009/3160); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 6 (substituted by SI 2010/489).

6 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 11(1); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 11(1). As to the duties of the Secretary of State or the Welsh Ministers at the end of each four-year or eight-year period see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 11(4); and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 11(4).

7 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 11(3); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 11(3). The reference methods of measurement are those referred to in EEC Council Decision 77/795 (OJ L334, 24.12.1977, p 29) establishing a common procedure for the exchange of information on the quality of surface fresh water in the Community art 4(a)(3): see the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 11(3); and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 11(3).

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319. Monitoring and review of effectiveness of restrictions in nitrate vulnerable zones.

At least every four years the Secretary of State or the Welsh Ministers¹ must review the effectiveness of the restrictions in nitrate vulnerable zones imposed² as a means of reducing or preventing water pollution caused by nitrates from agricultural sources and if necessary revise them³.

In order to carry out the regular reviews of the effectiveness of the restrictions in nitrate vulnerable zones⁴ the Secretary of State or the Welsh Ministers must establish a monitoring programme to assess the effectiveness of the restrictions⁵; and when carrying out this review must take into account available scientific and technical data⁶ and regional environmental conditions⁷.

When carrying out the review the Secretary of State or the Welsh Ministers must ensure that the public is given early and effective opportunities to participate⁸. They must make adequate arrangements for public participation to enable the public to prepare and participate effectively⁹. They must also ensure that (1) the public is consulted about any proposals and that relevant information about such proposals is made available to the public, including information about the right to participate in decision-making and about the body to which comments or questions may be submitted; and (2) the public is entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made¹⁰. They must identify the public entitled to be consulted, including non-governmental organisations promoting environmental protection¹¹; and reasonable time must be allowed for consultation¹².

Consultation must be taken into account in reaching a decision¹³. Following consultation the Secretary of State or the Welsh Ministers must inform the public about the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation process¹⁴.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Ie by the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349; and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143: see PARA 318. As to the meaning of 'nitrate vulnerable zone' see PARA 318 note 1.

3 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 46(1); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 46(1).

4 Ie the review under the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 46(1) and the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 46(1): see PARA 318.

5 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 46(2); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 46(2).

6 Ie particularly with reference to respective nitrogen contributions originating from agricultural and other sources.

- 7 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 46(3); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 46(3).
- 8 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 47(1); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 47(1).
- 9 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 47(2); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 47(2).
- 10 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 47(3); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 47(3).
- 11 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 47(4); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 47(4).
- 12 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 47(5); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 47(5).
- 13 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 47(6); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 47(6).
- 14 Nitrate Pollution Prevention Regulations 2008, SI 2008/2349, reg 47(7); Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143, reg 47(7).

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D. CODES OF PRACTICE

320. Codes of good agricultural practice.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ may by order made by statutory instrument approve any code of practice issued, whether by either or both of them or by another person, for the purpose of:

- 448 (1) giving practical guidance to persons engaged in agriculture² with respect to activities that may affect controlled waters³; and
- 449 (2) promoting what appear to the Secretary of State or to the Welsh Ministers to be desirable practices by such persons for avoiding or minimising the pollution of any such waters⁴.

The Secretary of State or the Welsh Ministers may at any time by such an order approve a modification of such a code or withdraw approval of such a code or modification⁵, but may not make any order under these provisions without first consulting the Environment Agency⁶.

A contravention⁷ of a code of practice as for the time being approved under these provisions does not of itself give rise to any civil or criminal liability⁸, but in determining how and when to exercise certain statutory powers⁹, the Agency must take into account whether there has been, or is likely to be, any such contravention¹⁰.

¹ The statutory wording is 'the ministers': but see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

² As to the meaning of 'agriculture' see **WATER AND WATERWAYS** vol 100 (2009) PARA 209 note 20.

³ As to the meaning of 'controlled waters' see PARA 289.

⁴ Water Resources Act 1991 s 97(1), (2). See the Water (Prevention of Pollution) (Code of Practice) Order 1998, SI 1998/3084, approving the Code of Good Agricultural Practice for the Protection of Water dated October 1998, also known as 'The Water Code Revised 1998' (including an erratum slip dated November 1998), which was issued by the then Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales and a copy of which was deposited in each House of Parliament on 2 December 1998 to give practical guidance to persons engaged in agriculture with respect to activities that may affect controlled waters and to promote desirable practices by such persons for avoiding or minimising the pollution of any such waters. See now the Water (Prevention of Pollution) (Code of Good Agricultural Practice) Order 2009, SI 2009/46, approving the Code of Good Agricultural Practice to protect water, soil and air quality which was issued by the Secretary of State on 6 January 2009 so far as it was issued for the purpose of (1) giving practical guidance to persons engaged in agriculture with respect to activities that may affect controlled waters; and (2) promoting what appears to the Secretary of State to be desirable practices by such persons for avoiding or minimising the pollution of any such waters: see art 2. The Water (Prevention of Pollution) (Code of Practice) Order 1998, SI 1998/3084 (see above) is also revoked as from 6 February 2009 so far as it applies to England: see the Water (Prevention of Pollution) (Code of Good Agricultural Practice) Order 2009, SI 2009/46, art 3. As to the Code of Good Agricultural Practice see also the Department for Environment, Food and Rural Affairs website which was, at the date at which this volume states the law, www.defra.gov.uk.

⁵ Water Resources Act 1991 s 97(1).

6 Water Resources Act 1991 s 97(3) (s 97(2), (3) amended by the Environment Act 1995 Sch 22 para 128). As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

7 As to the meaning of 'contravention' see **WATER AND WATERWAYS** vol 100 (2009) PARA 20 note 5.

8 Evidence of a contravention could, however, no doubt be used as evidence in support of an allegation of negligence in a civil claim.

9 le its power by giving a notice under the Water Resources Act 1991 s 86(1) to impose a prohibition under s 86 (see PARA 292) and any powers conferred on it by regulations under s 92 (see PARA 313): s 97(2)(a), (b) (as amended: see note 6).

10 Water Resources Act 1991 s 97(2) (as amended: see note 6).

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E. RESTORATION AND IMPROVEMENT WORKS FOR CONTROLLED WATERS, ETC

321. Anti-pollution works and operations.

Where it appears to the Environment Agency¹ that any poisonous, noxious or polluting matter or any waste matter² is or has been present in, or is likely to enter, any controlled waters³, the Agency is entitled to carry out the following works and operations⁴. In a case where the matter appears likely to enter any controlled waters, the Agency is entitled to carry out works and operations for the purpose of preventing it from doing so⁵. In a case where the matter appears to be or to have been present in any controlled waters, the Agency is entitled to carry out works and operations for the purpose of:

- 450 (1) removing or disposing of the matter;
- 451 (2) remedying or mitigating any pollution caused by its presence in the waters;
- or
- 452 (3) so far as it is reasonably practicable to do so, restoring waters, including the flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters⁶.

In either case the Agency is entitled to carry out investigations for the purpose of establishing the nature of the matter, the source of the matter, the nature and effects of any pollution caused or likely to be caused by the presence of the matter and the identity of any responsible persons⁷. Without prejudice to the Agency's powers of investigation, the above powers⁸ are only exercisable where (a) the Agency considers it necessary to carry out forthwith any such works or operations; or (b) it appears to the Agency, after reasonable inquiry, that no person can be found on whom to serve a works notice⁹.

Nothing in the relevant provisions¹⁰:

- 453 (i) authorises the Agency to impede or prevent the making of any discharge in pursuance of a consent¹¹;
- 454 (ii) derogates from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than thereunder¹²; or
- 455 (iii) affects any restriction imposed by or under any other enactment¹³, whether public, local or private¹⁴.

Where the Agency carries out any works, operations or investigations under any of the powers conferred by the relevant provisions¹⁵ it must be entitled to recover the expenses¹⁶ reasonably incurred in doing so from any responsible person¹⁷.

¹ As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 As to the meanings of 'poisonous, noxious or polluting' and 'waste matter' see PARA 291 notes 4-5; although note that that definition of 'waste' set out there was for the purposes of the Water Resources Act 1991 s 85(1).

3 As to the meaning of 'controlled waters' for the purposes of the Water Resources Act 1991 ss 161-161ZB (see also PARAS 322, 323) see PARA 289; definition applied by the Water Resources Act 1991 s 161ZC(8) (s 161ZC added by SI 2009/3104).

4 Water Resources Act 1991 s 161(1) (s 161 substituted by SI 2009/3104).

See generally also European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56) (the 'Environmental Liability Directive'); the Environmental Damage (Prevention and Remediation) Regulations 2009, SI 2009/153; and PARA 5.

5 Water Resources Act 1991 s 161(3) (as substituted: see note 4).

6 Water Resources Act 1991 s 161(2) (as substituted: see note 4). There is no statutory definition of 'aquatic environment', which presumably must be taken to include any flora or fauna damaged or destroyed within the controlled waters affected by the incident. As to powers of entry to carry out these works see PARA 148.

7 Water Resources Act 1991 s 161(4) (as substituted: see note 4). For these purposes, 'responsible person' means a person who has caused or knowingly permitted the matter (1) to be present in the controlled waters; or (2) to be at a place from which it was likely, in the opinion of the Agency, to enter the controlled waters: s 161(6) (as so substituted).

8 As to 'caused or knowingly permitted' see PARA 291 notes 2-3.

9 Water Resources Act 1991 s 161(5) (as substituted: see note 4). As to the procedure for works notices see s 161A; and PARA 324.

10 Ie in the Water Resources Act 1991 ss 161-161ZB (see also PARAS 322, 323).

11 Water Resources Act 1991 s 161ZC(1) (as added: see note 3). The consent referred to is a consent given under the Water Resources Act 1991 Pt III Ch II (ss 85-91): see PARA 299 et seq. A similar restriction is placed on the service of works notices: see PARA 324.

12 Water Resources Act 1991 s 161ZC(6)(a) (as added: see note 3).

13 As to the meaning of 'enactment' see **WATER AND WATERWAYS** vol 100 (2009) PARA 14 note 31.

14 Water Resources Act 1991 s 161ZC(6)(b) (as added: see note 3).

15 Ie the Water Resources Act 1991 ss 161, 161ZA (see also PARA 322).

16 For these purposes, 'expenses' includes costs: Water Resources Act 1991 s 161ZC(7) (as added: see note 3).

17 Water Resources Act 1991 s 161ZC(2) (as added: see note 3). As to the meaning of 'responsible person' see note 7, and PARA 322 note 5. Section 161ZC(3) is subject to s 161ZC(4). No expenses are recoverable from a person for any works, operations or investigations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to enter any controlled waters or to reach a place from which it was likely, in the opinion of the Agency, to enter any controlled waters: s 161ZC(3) (as so added). Section 161ZC(3) does not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31 December 1999: s 161ZC(4) (as so added). For these purposes, 'mine' has the same meaning as in the Mines and Quarries Act 1954 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 5): Water Resources Act 1991 s 161ZC(7) (as so added).

The provisions of s 89(3B), (3C) (see PARA 295) apply in relation to s 161ZC(3), (4) as they apply in relation to s 89(3), (4A): s 161ZC(5) (as so added).

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322. Other works and operations in respect of harm to controlled waters.

Where it appears to the Environment Agency¹ that any controlled waters² are being or have been harmed³, or are likely to be harmed, by any event, process or other source of potential harm (and it is immaterial whether the source of potential harm has been identified)⁴, the Agency is entitled to carry out works and operations for any of the following purposes (so far as it is reasonably practicable to achieve them):

- 456 (1) removing the source of potential harm;
- 457 (2) preventing any harm or further harm being caused to the controlled waters;
- 458 (3) in a case where the controlled waters are being or have been harmed (a) remedying or mitigating the effects of the harm; (b) restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before any harm was caused⁵.

The Agency is entitled to carry out investigations for the purpose of establishing any of the following:

- 459 (i) the source of any harm or potential harm to the controlled waters;
- 460 (ii) the nature and effects of any harm caused or likely to be caused to those waters; and
- 461 (iii) the identity of any responsible persons⁶.

¹ As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

² As to the meaning of 'controlled waters' see PARA 321 note 3.

³ For these purposes, 'harm' means any adverse impact on the condition of any hydromorphological quality element affecting the controlled waters that would be likely to prevent the achievement of the environmental objectives applicable to the controlled waters (whether by itself or in combination with other factors), other than an adverse impact caused by the entry into or presence in those waters of any poisonous, noxious or polluting matter or waste matter: Water Resources Act 1991 s 161ZA(2) (s 161ZA added by SI 2009/3104). 'Environmental objectives' and 'hydromorphological quality element' have the same meaning as in the Water Framework Directive (ie European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy: see generally PARA 23): Water Resources Act 1991 s 161ZA(3) (as so added). As to the meanings of 'poisonous, noxious or polluting' and 'waste matter' see PARA 291 notes 4-5.

As to the scope of s 161ZA see PARA 321. As to the recovery of expenses see PARA 321.

⁵ Water Resources Act 1991 s 161ZA(4) (as added: see note 3). Without prejudice to the power of the Agency to carry out those investigations, the powers conferred by s 161ZA(4) are only exercisable in a case where (1) the Agency considers it necessary to carry out forthwith any works or operations falling within that provision; or (2) it appears to the Agency, after reasonable inquiry, that no responsible person can be found on whom to serve a works notice: s 161ZA(6) (as so added). As to serving a works notice see PARA 324. For these purposes, 'responsible person' means a person who has caused or knowingly permitted (a) any harm to be caused to the controlled waters; or (b) a source of potential harm to exist that is likely, in the opinion of the Agency, to cause harm to the controlled waters: s 161ZA(7) (as so added). As to improving controlled waters see PARA 323.

6 Water Resources Act 1991 s 161ZA(5) (as added: see note 3).

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323. Works and operations for improving controlled waters.

Where it appears to the Environment Agency¹ that (1) the condition of any hydromorphological quality element² affecting any controlled waters³ is unsatisfactory⁴; and (2) it is possible to improve the hydromorphological quality element by carrying out works or operations⁵, the Agency is entitled to carry out works and operations for the purpose of improving the condition of the hydromorphological quality element in question with a view to achieving (or contributing to the achievement of) the applicable environmental objectives⁶.

The Agency is also entitled to carry out investigations for the purpose of establishing why the condition of the hydromorphological quality element in question is unsatisfactory⁷.

1 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 For these purposes, 'environmental objectives' and 'hydromorphological quality element' have the same meanings as in the Water Framework Directive (ie European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy: see generally PARA 23): Water Resources Act 1991 s 161ZB(3) (s 161ZB added by SI 2009/3104).

3 As to the meaning of 'controlled waters' see PARA 321 note 3.

4 For these purposes, the condition of a hydromorphological quality element affecting the controlled waters is unsatisfactory if (whether by itself or in combination with other factors) it is likely to prevent the waters from achieving the applicable environmental objectives: Water Resources Act 1991 s 161ZB(2) (as added: see note 2). As to the meaning of 'environmental objectives' see note 2.

5 Water Resources Act 1991 s 161ZB(1) (as added: see note 2).

6 Water Resources Act 1991 s 161ZB(4) (as added: see note 2).

7 Water Resources Act 1991 s 161ZB(5) (as added: see note 2).

Without prejudice to the power of the Agency to carry out those investigations, the powers conferred by s 161ZB(4) are only exercisable if it appears to the Agency that it is unable to secure that the necessary works or operations are carried out by exercising its powers under s 161 (see PARA 321) or s 161ZA (see PARA 322) or by serving a works notice (see PARA 324) on any responsible person: s 161ZB(6) (as so added).

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324. Notices requiring persons to carry out anti-pollution works or operations.

Where it appears to the Environment Agency¹ that (1) any poisonous, noxious or polluting matter or any waste matter² is or has been present in, or is likely to enter, any controlled waters³; or (2) any controlled waters are being or have been harmed, or are likely to be harmed, by any event, process or other source of potential harm⁴, the Agency is entitled to serve a works notice⁵ on any responsible person⁶.

For these purposes, a 'works notice' is a notice requiring the person on whom it is served to carry out such of the following works or operations as may be specified in the notice⁷. The works or operations that may be so specified are certain relevant works or operations which may be carried out⁸.

Where the Agency has carried out any relevant investigations⁹ and serves a works notice on a responsible person in connection with the matters to which the investigations relate it must (unless the notice is quashed or withdrawn) be entitled to recover from that person the costs or expenses reasonably incurred in carrying out those investigations¹⁰.

The appropriate national authority¹¹ may, if it thinks fit in relation to any person, give directions to the Agency as to whether or how it should exercise its powers under the provision on the form of work notices¹².

1 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 As to the meanings of 'poisonous, noxious or polluting' and 'waste matter' see PARA 291 notes 4-5.

3 Water Resources Act 1991 s 161A(1)(a) (s 161A substituted by SI 2009/3104). This is so that the Water Resources Act 1991 s 161 applies: see PARA 321. As to the meaning of 'controlled waters' for the purposes of the Water Resources Act 1991 ss 161A-161AB see PARA 289; definition applied by the Water Resources Act 1991 s 161A(7) (as so substituted).

Nothing in s 161A entitles the Agency to require the carrying out of any works or operations which would impede or prevent the making of any discharge in pursuance of a consent given under Pt III Ch 2 (see ss 85-89) (see PARA 291 et seq): s 161AB(1) (s 161AB added by SI 2009/3104).

No works notice may be served on any person requiring him to carry out any works or operations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to enter any controlled waters or to reach a place from which it was likely, in the opinion of the Agency, to enter any controlled waters: Water Resources Act 1991 s 161AB(2) (as so added). Section 161AB(2) does not apply to the service of a notice on the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31 December 1999: s 161AB(3) (as so added). For these purposes, 'mine' has the same meaning as in the Mines and Quarries Act 1954 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 5): Water Resources Act 1991 s 161AB(5) (as so added).

The provisions of s 89(3B), (3C) (see PARA 295) apply in relation to s 161AB(2), (3) as they apply in relation to s 89(3), (4A): s 161AB(4) (as so added).

4 Water Resources Act 1991 s 161A(1)(b) (as substituted: see note 3). This is so that the Water Resources Act 1991 s 161ZA applies: see PARA 322. See note 3.

5 As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

6 Water Resources Act 1991 s 161A(1) (as substituted: see note 3). As to the meaning of 'responsible person' see PARA 321 note 7 (for s 161); and PARA 322 note 5 (for s 161ZA): see s 161A(2) (as so substituted). See note 3.

7 Water Resources Act 1991 s 161A(3) (as substituted: see note 3). See note 3.

8 Water Resources Act 1991 s 161A(4) (as substituted: see note 3). The reference is to works or operations which may be carried out under s 161(2) or (3) (see PARA 321) or s 161ZA(4) (see PARA 322), as the case may be. See note 3.

9 In such investigations as are mentioned in the Water Resources Act 1991 s 161(4) (see PARA 321) or s 161ZA(5) (see PARA 322).

10 Water Resources Act 1991 s 161A(5) (as substituted: see note 3). As to recovery of costs and expenses see PARA 321. See note 3.

11 For the purposes of the Water Resources Act 1991 ss 161A, 161AA, 'appropriate national authority' means (1) in relation to England, the Secretary of State (see PARA 58); (2) in relation to Wales, the Welsh Ministers (see PARA 59): Water Resources Act 1991 s 161AA(5) (s 161AA added by SI 2009/3104).

12 Water Resources Act 1991 s 161A(6) (as substituted: see note 3). See note 3. The reference is to s 161AA (see below).

A works notice (1) must specify the periods within which the person on whom it is served is required to do each of the things specified in the notice; and (2) is without prejudice to the powers of the Agency to carry out any works or operations under s 161(5)(a) (see PARA 321 head (b)) or s 161ZA(6)(a) (see PARA 322 note 5 head (2)): s 161AA(1) (as added: see note 11).

Before serving a works notice on any person, the Agency must reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice: s 161AA(2) (as so added).

The appropriate national authority may by regulations make provision for or in connection with (a) the form or content of works notices; (b) requirements for consultation, before the service of a works notice, with persons other than the person on whom that notice is to be served; (c) steps to be taken for the purposes of any consultation required under s 161AA(2) (see above) or regulations made by virtue of head (b) above; or (d) any other steps of a procedural nature which are to be taken in connection with or in consequence of the service of a works notice: s 161AA(3) (as so added). A works notice must: (i) in the case of (A) a potential pollution incident, describe the nature of the risk to controlled waters, identifying the controlled waters which may be affected and the place from which the matter in question is likely to enter those waters, and (B) harm which is likely to be caused to controlled waters, describe the nature of the risk to controlled waters which may be affected and the event, process or other source which is likely to cause that harm; (ii) in the case of (A) an actual pollution incident, describe the nature and extent of the pollution, identifying the controlled waters affected by it, and (B) actual harm which is caused to controlled waters, describe the nature and extent of the harm, in each case identifying the controlled waters which have been affected by the pollution incident or harm; (iii) specify the works or operations required to be carried out by the person on whom the notice is served, stating his name and address; (iv) give the Environment Agency's reasons for serving the notice on that person and for requiring those works or operations to be carried out; (v) inform the person on whom the notice is served of his right of appeal under the Water Resources Act 1991 s 161C (see PARA 327) (including the time for appealing) and of the prescribed requirements in relation to its exercise; (vi) state that the Agency is entitled (unless the notice is quashed or withdrawn) to recover from the person on whom the notice is served its costs or expenses reasonably incurred in carrying out such investigations as are mentioned in s 161(4) (see PARA 321) and s 161ZA(5) (see PARA 322); and (vii) set out the contents of s 161D(1)-(4) (consequences of not complying with a works notice) (see PARA 328): see the Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 2 (amended by SI 2009/3104).

A works notice is not regarded as invalid or as invalidly served by reason only of a failure to comply with the requirements of the Water Resources Act 1991 s 161AA(2) or of regulations made by virtue of head (b) above: s 161AA(4) (as so added). The power to make regulations under s 161AA is exercisable by statutory instrument subject in the case of regulations made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament; and in the case of regulations made by the Welsh Ministers, to annulment in pursuance of a resolution of the National Assembly for Wales: s 161AA(6) (as so added).

In s 161AA, s 219(1) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 21) does not apply; and in s 219(2), references to 'the Ministers' or 'the Secretary of State' are taken to be references to the appropriate national authority: s 161AA(7) (as so added).

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325. Recovery of expenses of anti-pollution works or operations.

Where the Environment Agency¹ carries out anti-pollution works, operations or investigations², it is entitled to recover the expenses³ reasonably incurred⁴ in so doing from any person who:

- 462 (1) caused or knowingly permitted⁵ the matter in question to be present in any controlled waters⁶; or
- 463 (2) caused or knowingly permitted it to be present at the place from which it was likely, in the Agency's opinion, to enter any controlled waters⁷.

No such expenses are, however, recoverable from a person for any works, operations or investigation in respect of water from an abandoned mine⁸ or an abandoned part of a mine⁹ which that person permitted to reach such a place as is mentioned in head (2) above or to enter any controlled waters¹⁰. This exemption does not apply to the owner¹¹ or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31 December 1999¹².

Nothing in these provisions derogates from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than thereunder, or affects any restriction imposed by or under any other enactment¹³, whether public, local or private¹⁴.

¹ As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

² Ie such works, operations or investigations as are mentioned in the Water Resources Act 1991 s 161(1): see PARA 321.

³ For these purposes, 'expenses' includes costs: Water Resources Act 1991 s 161(6) (definition added by the Environment Act 1995 s 60(1), (7)). As to the recovery of expenses generally see **WATER AND WATERWAYS** vol 101 (2009) PARA 463 note 11; and as to the recovery of the costs or expenses of carrying out investigations as to the source etc of polluting matter see PARA 321.

⁴ There is no statutory guidance as to what will be considered reasonable for these purposes. There will presumably be an onus on the Agency to obtain competitive quotes when using outside contractors. It is likely that the Agency will be able to recover establishment expenses, provided these can be properly identified. Where expense is incurred in restoring flora and fauna, any element of betterment is likely to be disallowed: see *Bruton and National Rivers Authority v Clarke* [1994] Water Law 145.

⁵ As to the meaning of 'causing or knowingly permitting' see PARA 291 notes 2-3.

⁶ As to the meaning of 'controlled waters' see PARA 289; definition applied by the Water Resources Act 1991 s 161(6).

⁷ Water Resources Act 1991 s 161(3) (amended by the Environment Act 1995 s 60(1), (4), Sch 22 para 128). See *Bartoline Ld v Royal & Sun Alliance Insurance plc* [2007] 1 All ER (Comm) 1043, [2007] Lloyd's Rep IR 423.

⁸ As to the meaning of 'mine' see PARA 295 note 9; definition applied by the Water Resources Act 1991 s 161(6).

⁹ As to what constitutes part of a mine see, by virtue of the Water Resources Act 1991 s 161(6), the Mines and Quarries Act 1954 s 180(3)-(6); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 5 note 14.

10 Water Resources Act 1991 s 161(4) (amended by the Environment Act 1995 s 60(1), (5)). A similar exemption applies to the service of works notices: see the Water Resources Act 1991 s 161A(8); and PARA 324.

11 As to the meaning of 'owner' see **WATER AND WATERWAYS** vol 100 (2009) PARA 22 note 9.

12 Water Resources Act 1991 s 161(4A) (added by the Environment Act 1995 s 60(1), (6)). The provisions of the Water Resources Act 1991 s 89(3B), (3C) (provisions for determining when mine or part abandoned) (see PARA 295), apply in relation to s 161(4), (4A) as they apply in relation to s 89(3), (3A): s 161(4B) (as so added). Similar provision is made in respect of works notices: see PARA 324.

13 As to the meaning of 'enactment' see **WATER AND WATERWAYS** vol 100 (2009) PARA 14 note 31.

14 Water Resources Act 1991 s 161(5).

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326. Rights of entry etc under works notices.

A works notice¹ may require a person to carry out works or operations in relation to any land or waters notwithstanding that he is not entitled to carry them out². Any person whose consent is required before any such works or operations are carried out must grant, or join in granting, such rights in relation to any land or waters as will enable the person on whom the works notice is served to comply with any requirements imposed by that notice³. Before serving a works notice, the Environment Agency⁴ must reasonably endeavour to consult every person who appears to it to be the owner⁵ or occupier of any relevant land⁶, and to be a person who might be required to grant, or join in granting, any such rights, concerning the rights which that person may be so required to grant⁷. A person who grants, or joins in granting, any such rights is entitled, on making an application within such period, in such manner, and to such person as may be prescribed⁸, to be paid by the person on whom the works notice is served compensation of such amount as may be determined in such manner as may be prescribed⁹.

An application for compensation must be made within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on whichever is the latest of the following dates:

- 464 (1) 12 months after the date of the grant of those rights;
- 465 (2) where there is an appeal against the works notice¹⁰ which imposed the requirements in relation to which those rights were granted, 12 months after the date on which the appeal is determined or withdrawn; or
- 466 (3) six months after the date on which the rights were first exercised¹¹.

An application for compensation must be made in writing and delivered at or sent by pre-paid post to the last known address for correspondence of the person to whom the right was granted¹². The application must contain:

- 467 (a) a copy of the grant of rights in respect of which the grantor¹³ is applying for compensation and of any plans attached to such grant;
- 468 (b) a description of the exact nature of any interest in land in respect of which compensation is applied for; and
- 469 (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of heads (i) to (v) below and showing how the amount applied for under each head has been calculated¹⁴.

Compensation is payable for loss and damage of the following descriptions:

- 470 (i) any depreciation in the value of any relevant interest¹⁵ to which the grantor is entitled which results from the grant of the right;
- 471 (ii) loss or damage, in relation to any relevant interest to which he is entitled, which is attributable to the grant of the right or the exercise of it, does not consist of depreciation in the value of that interest and is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance,

- if that interest had been acquired compulsorily under the Acquisition of Land Act 1981, in pursuance of a notice to treat served on the date on which the grant of the right was made;
- 472 (iii) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest for the purposes of heads (i) and (ii) above and which results from the grant of the right or from the exercise of it;
- 473 (iv) any loss or damage sustained by the grantor, other than in relation to any interest in land to which he is entitled, which is attributable to the grant of the right or the exercise of it; and
- 474 (v) the amount of any valuation and legal expenses reasonably incurred by the grantor in granting the right and in the preparation of the application for and the negotiation of the amount of compensation¹⁶.

The rules for assessing compensation set out in the Land Compensation Act 1961¹⁷ have effect, so far as applicable and subject to any necessary modifications, for the purpose of assessing any such compensation as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land¹⁸. Where the relevant interest in respect of which any compensation is to be assessed is subject to a mortgage:

- 475 (A) the compensation must be assessed as if the interest were not subject to the mortgage;
- 476 (B) no compensation is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
- 477 (C) any compensation which is payable in respect of the interest which is subject to the mortgage must be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and must, in either case, be applied by him as if it were proceeds of sale¹⁹.

Any question of disputed compensation must be referred to and determined by the Upper Tribunal²⁰.

1 'Works notice' means a notice under the Water Resources Act 1991 s 161A (see PARA 324): s 161B(7) (s 161B added by the Environment Act 1995 Sch 22 para 162). As to the application of the Water Resources Act 1991 s 161B to works notices under the Water Act 2003 s 4 see **WATER AND WATERWAYS** vol 100 (2009) PARA 216.

2 Water Resources Act 1991 s 161B(1) (as added: see note 1).

3 Water Resources Act 1991 s 161B(2) (as added: see note 1).

4 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

5 As to the meaning of 'owner' see **WATER AND WATERWAYS** vol 100 (2009) PARA 22 note 9.

6 'Relevant land' means any land or waters in relation to which the works notice in question requires, or may require, works or operations to be carried out, or any land adjoining or adjacent to that land or those waters: Water Resources Act 1991 s 161B(7) (as added: see note 1).

7 Water Resources Act 1991 s 161B(3) (as added: see note 1). A works notice is not, however, regarded as invalid, or as invalidly served, by reason only of any failure to comply with these requirements: s 161B(4) (as so added).

8 'Prescribed' means prescribed by regulations made by the Secretary of State or, in relation to Wales, by the Welsh Ministers: Water Resources Act 1991 s 161B(7) (as added: see note 1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. See also note 9.

9 Water Resources Act 1991 s 161B(5) (as added; see note 1). Without prejudice to the generality of the regulations that may be made by virtue of s 161B(5), regulations by virtue of that subsection may: (1) provide for the basis on which any amount to be paid by way of compensation under s 161B is to be assessed; (2) without prejudice to the generality of head (1) above, provide for compensation under this section to be payable in respect of (a) any effect of any rights being granted; or (b) any consequence of the exercise of any rights which have been granted; (3) provide for the times at which any entitlement to compensation under s 161B is to arise or at which any such compensation is to become payable; (4) provide for the persons or bodies by whom, and the manner in which, any dispute (a) as to whether any, and (if so) how much and when, compensation under this section is payable; or (b) as to the person to or by whom it shall be paid, is to be determined; (5) provide for when or how applications may be made for compensation under s 161B; (6) without prejudice to the generality of head (4) above, provide for when or how applications may be made for the determination of any such disputes as are mentioned in that head; (7) without prejudice to the generality of heads (5) and (6) above, prescribe the form in which any such applications as are mentioned in those heads are to be made; (8) make provision similar to any provision made by Sch 19 para 8 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 469); (9) make different provision for different cases, including different provision in relation to different persons or circumstances; (10) include such incidental, supplemental, consequential or transitional provision as the Secretary of State considers appropriate: s 161B(6) (substituted by SI 2007/3538).

As to regulations under the Water Resources Act 1991 s 161B(5), (6) see the Anti-Pollution Works Regulations 1999, SI 1999/1006; and as to regulations under the Water Resources Act 1991 s 161B(5)-(7) see the Water Resources (Abstraction and Impounding) Regulations 2006, SI 2006/641.

10 As to such appeals see PARA 327.

11 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 7, Schedule para 2. As to appeals in regard to enforcement notices and works notices see also the Water Resources (Abstraction and Impounding) Regulations 2006, SI 2006/641, reg 28; and **WATER AND WATERWAYS** vol 100 (2009) PARA 216 et seq.

12 Anti-Pollution Works Regulations 1999, SI 1999/1006, Schedule para 3(1).

13 'Grantor' means the person who grants, or joins in granting, any right pursuant to the Water Resources Act 1991 s 161B(2): Anti-Pollution Works Regulations 1999, SI 1999/1006, Schedule para 1.

14 Anti-Pollution Works Regulations 1999, SI 1999/1006, Schedule para 3(2).

15 'Relevant interest' means an interest in land out of which a right has been granted or which is bound by a right granted: Anti-Pollution Works Regulations 1999, SI 1999/1006, Schedule para 1.

16 Anti-Pollution Works Regulations 1999, SI 1999/1006, Schedule para 4. As to compensation for injurious affection generally see **COMPULSORY ACQUISITION OF LAND**.

17 In the rules set out in the Land Compensation Act 1961 s 5: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 754.

18 Anti-Pollution Works Regulations 1999, SI 1999/1006, Schedule para 5(1).

19 Anti-Pollution Works Regulations 1999, SI 1999/1006, Schedule para 5(2).

20 Anti-Pollution Works Regulations 1999, SI 1999/1006, Schedule para 6(1) (amended by SI 2009/1307). As to the Upper Tribunal see **ADMINISTRATIVE LAW**. In relation to the determination of any such question of compensation the provisions of the Land Compensation Act 1961 s 4 (costs) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 716, 717) apply as if references in s 4 to the acquiring authority were references to the person to whom the rights were granted: Anti-Pollution Works Regulations 1999, SI 1999/1006, Schedule para 6(2) (amended by SI 2009/1307).

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327. Appeals against works notices.

A person on whom a works notice is served¹ may appeal against the notice to the Secretary of State or, in relation to Wales, to the Welsh Ministers² within the period of 21 days beginning with the day on which the notice is served³. On any such appeal the Secretary of State or the Welsh Ministers must quash the notice, if satisfied that there is a material defect in it⁴, but may, subject to that, either confirm the notice with or without modification⁵ or quash it⁶.

The Secretary of State or the Welsh Ministers may make provision by regulations with respect to the grounds on which such appeals may be made and the procedure on any such appeal⁷. Among other things, such regulations may:

- 478 (1) include provisions comparable to those concerning appeals against notices requiring the execution of works under the Public Health Act 1936⁸;
- 479 (2) prescribe the cases in which a works notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
- 480 (3) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the works notice against which he is appealing;
- 481 (4) prescribe the cases in which the appellant may claim that a works notice should have been served on some other person and prescribe the procedure to be followed in those cases;
- 482 (5) make provision as respects the particulars to be included in the notice of appeal, the persons on whom notice of appeal is to be served and the particulars, if any which are to accompany the notice, or the abandonment of an appeal⁹.

These provisions are subject to the Secretary of State's or the Welsh Ministers' power¹⁰ to delegate or refer appeals¹¹.

A person who wishes to appeal to the Secretary of State or the Welsh Ministers under the above provisions must give him or them notice of the appeal¹² accompanied by copies of any application, consent, correspondence, decision, notice or other document relevant to the appeal¹³. At the same time as the appellant gives such notice, he must send to (a) the Environment Agency¹⁴; and (b) where a ground of appeal is that the notice might lawfully have been served on some other person, that person, a copy of the notice of appeal, together with a list of the documents provided¹⁵ to the Secretary of State or the Welsh Ministers¹⁶. If the appellant wishes at any time to withdraw his appeal he must do so by notice informing the Secretary of State or the Welsh Ministers and must send a copy of the notice to the Agency and any other person on whom he is required to serve a copy of his notice of appeal¹⁷.

Where the appellant informs the Secretary of State or the Welsh Ministers that he wishes the appeal to be disposed of on the basis of written representations, the Agency, and any party to the appeal other than the appellant, must submit any written representations to the Secretary of State or the Welsh Ministers not later than 14 days after receiving a copy of the notice of appeal¹⁸. The appellant must submit any further representations by way of reply not later than 14 days after receiving whichever is the latest of the representations referred to above¹⁹. A

party to the appeal who submits any representations to the Secretary of State or the Welsh Ministers must at the same time send a copy to every other party²⁰.

If a party to the appeal so requests or the Secretary of State so decides or the Welsh Ministers so decide, the appeal must be or continue in the form of a hearing, which may, if the person hearing the appeal so decides, be held, or held to any extent, in private²¹. The Secretary of State or the Welsh Ministers must give the parties to the appeal at least 28 days' notice, unless they agree to a shorter period of notice, of the date, time and place fixed for the hearing²². In the case of a hearing which is to be held wholly or partly in public, the Secretary of State or the Welsh Ministers must, at least 21 days before the date fixed for the hearing, publish a copy of the notice so given in a newspaper circulating in each locality which he considers or they consider may be affected by any matter which falls to be determined in relation to the appeal²³. The Secretary of State or the Welsh Ministers may vary the date fixed for the hearing²⁴ and may also vary the time or place fixed for the hearing²⁵. Each party to the appeal is entitled to be heard at a hearing²⁶ but nothing in this provision prevents the person appointed to hear the appeal from permitting any other person to be heard at the hearing; and such permission must not be unreasonably withheld²⁷. After the conclusion of a hearing, the person appointed to hear the appeal must, unless he was appointed under the statutory power of delegation²⁸, make a report in writing to the Secretary of State or the Welsh Ministers which must include his conclusions and recommendations or reasons for not making any recommendations²⁹.

The Secretary of State or the Welsh Ministers must notify the appellant in writing of the determination of the appeal and must provide him with a copy of any such report as is mentioned above³⁰ and must at the same time send a copy of such documents to the Agency and to every other party to the appeal³¹.

1 For these purposes, 'works notice' means a works notice under the Water Resources Act 1991 s 161A (see PARA 324): s 161C(5) (s 161C added by the Environment Act 1995 Sch 22 para 162). As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Water Resources Act 1991 s 161C(1) (as added: see note 1). As to the application of s 161C to works notices under the Water Act 2003 s 4 see **WATER AND WATERWAYS** vol 100 (2009) PARA 216.

4 A notice is not invalid, or invalidly served, by reason only of failure to comply with certain procedural requirements: see the Water Resources Act 1991 s 161A(6); and PARA 324.

5 As to the meaning of 'modifications' see **WATER AND WATERWAYS** vol 100 (2009) PARA 141 note 20.

6 Water Resources Act 1991 s 161C(2) (as added: see note 1).

7 Water Resources Act 1991 s 161C(3) (as added: see note 1). As to regulations under the Water Resources Act 1991 s 161C(3), (4) see the Anti-Pollution Works Regulations 1999, SI 1999/1006; and the Water Resources (Abstraction and Impounding) Regulations 2006, SI 2006/641.

8 I.e. provisions comparable to those in the Public Health Act 1936 s 290: see PARAS 125-127.

9 Water Resources Act 1991 s 161C(4) (as added: see note 1). See note 7.

10 I.e. under the Environment Act 1995 s 114: see PARA 65.

11 Water Resources Act 1991 s 161(C)(6) (as added: see note 1).

12 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 3(1). The notice of appeal must state (1) the name and address of the appellant and of all persons to be served with a copy of the notice of appeal; (2) the grounds on which the appeal is made; and (3) whether the appellant wishes the appeal to be determined on the basis of written representations or a hearing: reg 3(2).

As to regs 3-6 see also the Water Resources (Abstraction and Impounding) Regulations 2006, SI 2006/641, regs 28, 30, 33(2); and **WATER AND WATERWAYS** vol 100 (2009) PARAS 193, 216.

- 13 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 3(3). See note 12.
- 14 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.
- 15 le under the Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 3(3): see the text and note 13.
- 16 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 3(4). See note 12.
- 17 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 3(5). See note 12.
- 18 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 4(1). The Secretary of State or the Welsh Ministers may in any particular case (1) set longer time limits than those mentioned reg 4; (2) allow the parties to make representations in addition to those mentioned in reg 4(1), (2): reg 4(3). Any representations made by a party to the appeal must be dated with the date on which they are submitted to the Secretary of State or the Welsh Ministers: reg 4(4). See note 12.
- 19 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 4(2); and see note 18.
- 20 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 4(5); and see note 18.
- 21 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 5(1). See note 12.
- 22 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 5(2). See note 12.
- 23 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 5(3). See note 12.
- 24 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 5(4). The provisions of reg 5(2), (3) apply to the new date as they apply to the original date: reg 5(4). See note 12.
- 25 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 5(5). The Secretary of State or the Welsh Ministers must give such notice of any such variation as appears to him or to them to be reasonable: reg 5(5). See note 12.
- 26 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 5(6). See note 12.
- 27 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 5(7). See note 12.
- 28 See note 10.
- 29 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 5(8). See note 12.
- 30 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 6(1). See note 12.
- 31 Anti-Pollution Works Regulations 1999, SI 1999/1006, reg 6(2). See note 12.

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328. Consequences of not complying with a works notice.

If a person on whom the Environment Agency¹ serves a works notice² fails to comply with any of the requirements of the notice, he is guilty of an offence³ and liable to imprisonment or a fine or both⁴. If, however, the Agency is of the opinion that criminal proceedings under these provisions would afford an ineffectual remedy against a person who has failed to comply with the requirements of a works notice, the Agency may take proceedings in the High Court for the purpose of securing compliance with the notice⁵.

If any person on whom a works notice has been served fails to comply with any of its requirements, the Agency may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the Agency in doing it⁶.

1 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 For these purposes, 'works notice' means a works notice under the Water Resources Act 1991 s 161A (see PARA 324): s 161D(5) (s 161D added by the Environment Act 1995 Sch 22 para 162).

3 Water Resources Act 1991 s 161D(1) (as added: see note 2).

4 Water Resources Act 1991 s 161D(2) (as added: see note 2). Such a person is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £20,000, or to both, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both: see s 161D(2) (as so added). As to offences by bodies corporate see **WATER AND WATERWAYS** vol 100 (2009) PARA 185.

5 Water Resources Act 1991 s 161D(4) (as added: see note 2).

6 Water Resources Act 1991 s 161D(3) (as added: see note 2).

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329. Other powers to deal with foul water and pollution.

Every relevant undertaker¹, and the Environment Agency², has power³, for the purpose of carrying out its functions⁴:

- 483 (1) to carry out in a street⁵ all such works as are requisite for securing that the water in any relevant waterworks⁶ is not polluted or otherwise contaminated⁷; and
- 484 (2) to carry out any works requisite for, or incidental to, the purposes of any works falling within head (1) above, including for those purposes breaking up or opening a street, tunnelling or boring under a street, breaking up or opening a sewer, drain⁸ or tunnel and moving or removing earth and other materials⁹.

Every relevant undertaker and the Agency also has power¹⁰, for the purpose of carrying out its functions, to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated, and to carry out any works requisite for, or incidental to, the purposes of any such works¹¹. Nothing in any of the above provisions, however, authorises any relevant undertaker or the Agency to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State or, in relation to Wales, by the Welsh Ministers¹².

Without prejudice to the powers so conferred, every water undertaker¹³ and the Agency has power¹⁴ to construct and maintain drains, sewers, watercourses¹⁵, catchpits and other works, on land which belongs to that undertaker or as, the case may be, to the Agency, or over which or in which it has acquired the necessary easements or rights, for the purpose of intercepting, treating or disposing of any foul water arising or flowing upon that land¹⁶ or of otherwise preventing the pollution:

- 485 (a) of any waters, whether on the surface or underground, which belong to the Agency or any water undertaker or from which the Agency or any water undertaker is authorised to take water¹⁷;
- 486 (b) without prejudice to head (a) above, of any reservoir which belongs to or is operated by the Agency or any water undertaker or which the Agency or any water undertaker is proposing to acquire or construct for the purpose of being so operated¹⁸; or
- 487 (c) of any underground strata¹⁹ from which the Agency or any water undertaker is for the time being authorised, in pursuance of a licence²⁰, to abstract water²¹.

Where any water undertaker is proposing to carry out such works and the proposed works will affect any watercourse, the undertaker must consult the Agency before carrying out the works²². Nothing in heads (a) to (c) above, however, authorises²³ any water undertaker or the Agency to intercept or take any water which a navigation authority²⁴ is authorised to take or use for the purposes of its undertaking, without the consent²⁵ of the navigation authority²⁶.

1 As to the meaning of 'relevant undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 8. In certain circumstances these powers may also be exercised by a local authority: see **WATER AND WATERWAYS** vol 100 (2009) PARA 404.

2 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

3 The subject, in the case of a relevant undertaker, to the provisions of the Water Industry Act 1991 Pt VI Ch III (ss 179-192), and, in the case of the Agency, to the provisions of the Water Resources Act 1991 ss 163-186: see **WATER AND WATERWAYS** vol 101 (2009) PARA 464 et seq.

4 As to the meaning of 'functions' in relation to an undertaker see **WATER AND WATERWAYS** vol 100 (2009) PARA 133 note 5; and as to the general functions of the Agency see PARA 72. As to the power of entry to carry out these works see **WATER AND WATERWAYS** vol 101 (2009) PARA 477.

5 As to the meaning of 'street' see **WATER AND WATERWAYS** vol 100 (2009) PARA 308 note 19.

6 For these purposes, 'relevant waterworks' means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises; and 'waterworks' includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank: Water Industry Act 1991 s 161(7); Water Resources Act 1991 s 162(6). As to the meaning of 'water main' see **WATER AND WATERWAYS** vol 100 (2009) PARA 138 note 11; as to the meanings of 'resource main' and 'service pipe' see **WATER AND WATERWAYS** vol 100 (2009) PARA 179 notes 4, 8; and as to the meaning of 'discharge pipe' see **WATER AND WATERWAYS** vol 101 (2009) PARA 466 note 6. As to the meaning of 'water undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 4.

7 Water Industry Act 1991 s 161(1)(a); Water Resources Act 1991 s 162(2)(a) (Water Resources Act 1991 s 162(1)-(4) amended by the Environment Act 1995 Sch 22 para 128).

8 As to the meanings of 'sewer' and 'drain' see PARA 998.

9 Water Industry Act 1991 s 161(1)(b); Water Resources Act 1991 s 162(2)(b). The provisions of the Water Industry Act 1991 s 158 or, as the case may be, the Water Resources Act 1991 s 159 (powers to lay pipes in streets) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 462), have effect, so far as applicable, in relation to the powers so conferred as they have effect in relation to the powers conferred by the Water Industry Act 1991 s 161(1) or the Water Resources Act 1991 s 162(2): Water Industry Act 1991 s 161(1); Water Resources Act 1991 s 162(2).

10 See note 2.

11 Water Industry Act 1991 s 161(2); Water Resources Act 1991 s 162(3) (as amended: see note 7). The provisions of the Water Industry Act 1991 s 159 or, as the case may be, the Water Resources Act 1991 s 160 (powers to lay pipes in other land) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 463) have effect, so far as applicable, in relation to these powers as they have effect in relation to the powers conferred by the Water Industry Act 1991 s 159(1) or the Water Resources Act 1991 s 160(1): Water Industry Act 1991 s 161(2); Water Resources Act 1991 s 162(3).

12 Water Industry Act 1991 s 187(1), (3); Water Resources Act 1991 s 181(1), (5) (as amended: see note 7). An approval for these purposes must be given to a relevant undertaker, or to the Agency, by the service on it of a notice containing the approval: Water Industry Act 1991 s 187(2); Water Resources Act 1991 s 181(2) (as amended: see note 7). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

13 Note that this power applies to water undertakers only, and not to sewerage undertakers: cf the Water Industry Act 1991 s 161(1), (2); and the text and notes 1-10.

14 The without prejudice to the powers conferred (1) on a water undertaker by the Water Industry Act 1991 s 161(1), (2) but subject to the provisions of Pt VI Ch III (ss 179-192); or (2) on the Agency by the Water Resources Act 1991 ss 161-161D and s 162(2), (3): Water Industry Act 1991 s 161(3); Water Resources Act 1991 s 162(1) (as amended (see note 7); and further amended by the Environment Act 1995 Sch 22 para 163).

15 As to the meaning of 'watercourse' see **WATER AND WATERWAYS** vol 100 (2009) PARA 187 note 2.

16 Water Industry Act 1991 s 161(3)(a); Water Resources Act 1991 s 162(1) (as amended: see note 7). References in the Water Industry Act 1991 s 158 to the laying of a relevant pipe include references to the laying of any drain or sewer for any of the purposes mentioned in s 161(3)(a), (b) and to the construction of a watercourse for any of those purposes: s 161(7).

17 Water Industry Act 1991 s 161(3)(b)(i) (amended by the Environment Act 1995 Sch 22 para 117); Water Resources Act 1991 s 162(1) (as amended: see note 7), applying s 159(6)(b)(i).

18 Water Industry Act 1991 s 161(3)(b)(ii) (as amended: see note 17); Water Resources Act 1991 s 162(1) (as amended: see note 7), applying s 159(6)(b)(ii).

19 As to the meaning of 'underground strata' see **WATER AND WATERWAYS** vol 100 (2009) PARA 187 note 5.

20 Is a licence under the Water Resources Act 1991 Pt II Ch II (ss 24-72): see **WATER AND WATERWAYS** vol 100 (2009) PARA 227 et seq.

21 Water Industry Act 1991 s 161(3)(b)(iii) (as amended: see note 17); Water Resources Act 1991 s 162(1) (as amended: see note 7), applying s 159(6)(b)(iii). Note that the powers of entry for works purposes do not apply to entry for the purposes of a power conferred by the Water Industry Act 1991 s 161(3) or the Water Resources Act 1991 s 162(1): see the Water Industry Act 1991 s 168(5); the Water Resources Act 1991 s 170(4); and **WATER AND WATERWAYS** vol 101 (2009) PARA 477.

22 Water Industry Act 1991 s 161(4) (as amended: see note 17).

23 Is without prejudice, in the case of a water undertaker, to the protective provisions of the Water Industry Act 1991 Pt VI Ch III (ie ss 183-191) or, in the case of the Agency, to the Water Resources Act 1991 ss 178-184: Water Industry Act 1991 s 161(5), (8); Water Resources Act 1991 s 162(4) (as amended: see note 7). As to those protective provisions see **WATER AND WATERWAYS** vol 101 (2009) PARAS 490 et seq, 576 et seq.

24 As to the meaning of 'navigation authority' see **WATER AND WATERWAYS** vol 100 (2009) PARA 189 note 1.

25 Any dispute as to whether any consent for these purposes is being unreasonably withheld must be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers: Water Industry Act 1991 s 161(6); Water Resources Act 1991 s 162(5).

26 Water Industry Act 1991 s 161(5); Water Resources Act 1991 s 162(4) (as amended: see note 7).

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(v) Water Quality Objectives

330. Classification of water quality.

The Secretary of State or, in certain cases, the Welsh Ministers¹, may, in relation to any description of controlled waters², by regulations prescribe a system of classifying the quality of those waters according to criteria specified in the regulations³. The criteria so specified in relation to any classification must consist of one or more of the following:

- 488 (1) general requirements as to the purposes for which the waters to which the classification is to be applied are to be suitable;
- 489 (2) specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are, or are required to be, present in the water;
- 490 (3) specific requirements as to other characteristics of those waters,

and for the purposes of any such classification, regulations so made may provide that the question of whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed⁴.

Water quality is classified as follows:

- 491 (a) inland waters⁵, including any lake or pond which is to be treated for the statutory purposes as a relevant lake or pond⁶, are classified by reference to their suitability for abstraction for supply, after undergoing purification treatment, as drinking water⁷, and are additionally classified according to the concentrations in them of certain prescribed substances⁸;
- 492 (b) coastal waters⁹ and relevant territorial waters¹⁰, including waters which are to be treated for the statutory purposes as relevant territorial waters¹¹, are classified according to the concentrations in them of certain prescribed substances¹²;
- 493 (c) relevant territorial waters, coastal waters and inland freshwaters¹³ are classified according to the concentrations in samples taken and tested in the prescribed manner¹⁴ of certain prescribed substances, which must not exceed the relevant concentration specified for these purposes¹⁵;
- 494 (d) inland freshwaters which are relevant rivers or watercourses¹⁶ are classified according to the extent to which the prescribed requirements¹⁷ are satisfied by a series of samples of water taken and analysed¹⁸ in accordance with the prescribed procedure¹⁹;
- 495 (e) relevant territorial waters, coastal waters and inland freshwaters which are bathing waters²⁰ are classified according to prescribed criteria²¹, sampling requirements²² and quality standards²³;
- 496 (f) inland freshwaters which need protection or improvement in order to support fish life²⁴ are classified according to whether the prescribed requirements²⁵ are met by samples taken in the prescribed manner²⁶; and
- 497 (g) controlled waters which are coastal or brackish waters²⁷ and which need protection or improvement in order to support shellfish (bivalve and gasteropod molluscs) life and growth and thus to contribute to the high quality of shellfish

products directly edible by man are also classified according to whether the prescribed requirements²⁸ are met by samples taken in the prescribed manner²⁹.

Although not repealed, in practice the provisions for water quality objectives including those discussed above³⁰ have been superseded by the River Basin Management Plans provided for under the Water Framework Directive³¹.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'controlled waters' see PARA 289. 'Description' allows for the classification of all waters, or of a particular class, or of two or more different classes: see the Water Resources Act 1991 s 82(1).

3 Water Resources Act 1991 s 82(1). See also European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy (see PARA 23; and **WATER AND WATERWAYS** vol 100 (2009) PARA 7) which will ultimately supersede the Water Quality Objectives.

4 Water Resources Act 1991 s 82(2). In exercise of the powers conferred by the Water Resources Act 1991, the following regulations have been made: (1) the Bathing Waters (Classification) (England) Regulations 2003, SI 2003/1238 (revoked and replaced as from 24 March 2015 by the Bathing Water Regulations 2008, SI 2008/1097: see note 20); (2) the Surface Waters (Dangerous Substances) (Classification) Regulations 1998, SI 1998/389; (3) the Surface Waters (Dangerous Substances) (Classification) Regulations 1997, SI 1997/2560; (4) the Surface Waters (Shellfish) (Classification) Regulations 1997, SI 1997/1332 (amended by SI 2009/1266); (5) the Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331 (amended by SI 2003/1053; and SI 2009/1264); (6) the Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996, SI 1996/3001; (7) the Surface Waters (River Ecosystem) (Classification) Regulations 1994, SI 1994/1057; and (8) the Surface Waters (Dangerous Substances) (Classification) Regulations 1992, SI 1992/337. In addition, by virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 para 1(1), (2), the Surface Waters (Dangerous Substances) (Classification) Regulations 1989, SI 1989/2286; and the Bathing Waters (Classification) Regulations 1991, SI 1991/1597 (revoked and replaced as from 24 March 2015 by the Bathing Water Regulations 2008, SI 2008/1097: see note 20), have effect as if so made.

5 As to the meaning of 'inland waters' see **WATER AND WATERWAYS** vol 100 (2009) PARA 187 note 2.

6 le by virtue of an order made under the Water Resources Act 1991 s 104(4): see PARA 289. As to the meaning of 'relevant lake or pond' see PARA 289 note 10.

7 See the Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996, SI 1996/3001, regs 1(3), 2. The classifications used are DW1, DW2 and DW3, which reflect the mandatory values assigned by EC Council Directive 75/440 (OJ L194, 25.07.75, p 26), Annex II (Directive 75/440 now repealed: see PARA 23) to the parameters listed in the Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996, SI 1996/3001, reg 2, Sch 1. Waters classified under those regulations are treated in any year as complying with the limit specified in Sch 1 for the relevant class of waters in relation to a parameter if in that year (1) 95% of the samples taken in relation to those waters in accordance with reg 5 comply with the limit; (2) none of the samples exceeds the limit by more than 50%; (3) there is no associated danger to public health where any of the samples exceeds the limit; and (4) there have been no occasions on which consecutive samples so taken at statistically suitable intervals exceed the limit: reg 3(1). Non-compliant samples are to be ignored for these purposes if they are the result of a flood, natural disaster or abnormal weather conditions; and head (2) above does not apply in the case of the limits specified in Sch 1 in relation to temperature: reg 3(2), (3). The Environment Agency has power to waive any requirement to comply with the relevant limit value for any parameter in relation to waters so classified if it considers it appropriate to do so as a result of any flood or other natural disaster or in certain other circumstances (see reg 4(1), (3), (5)); but may not do so if that would result in a danger to public health (reg 4(2)). Where the Agency exercises this power, it must immediately notify the Secretary of State or the Welsh Ministers in writing giving details, stating its reasons and specifying the period of the waiver: reg 4(4). As to the Agency's duty to ensure that waters so classified are sampled, and the samples analysed, see reg 5, Sch 2. Where a survey by the Agency of any waters so classified shows that the values obtained for any parameter are considerably superior to the quality required by Sch 1, the Agency may reduce the frequency of sampling of the waters in relation to that parameter: reg 6(1). The Agency may also decide that regular sampling and analysis of any waters so classified is not needed in relation to any parameter if (a) the requirements of reg 6(1) are satisfied in relation to the waters; (b) there is no pollution of the waters; (c) there is no risk of the quality of the waters deteriorating; and (d) the quality of the waters is superior in relation to that parameter to the minimum required for waters classified as DW1: reg 6(2). As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

8 As to such classification see the Surface Waters (Dangerous Substances) (Classification) Regulations 1989, SI 1989/2286, reg 2(1). A system employing the classification DS1 is prescribed for these purposes, and the criterion for that classification is that the annual mean concentrations of the substances listed in reg 3(1), Sch 1 col 1 do not exceed the concentrations specified in Sch 1 col 2: regs 2(1), 3(1). This classification reflects the quality objectives specified in EC Council Directive 82/176 (OJ L81, 27.03.82, p 29) Annex II (mercury and its compounds); EC Council Directive 83/513 (OJ L291, 24.10.83, p 01) Annex II (cadmium and its compounds); EC Council Directive 84/156 (OJ L74, 17.03.84, p 49) Annex II (mercury and its compounds); EC Council Directive 84/491 (OJ L274, 17.10.84, p 11) Annex II (hexachlorocyclohexane); EC Council Directive 86/280 (OJ L181, 04.07.86, p 16) Annex II (carbon tetrachloride, DDT and pentachlorophenol) and the amendments made thereto by EC Council Directive 88/347 (OJ L158, 25.06.88, p 35) in relation to aldrin, dieldrin, endrin and isodrin, hexachlorobenzene, hexachlorobutadiene and chloroform (see also PARA 24).

9 As to the meaning of 'coastal waters' see PARA 289 at head (2) in the text.

10 As to the meaning of 'relevant territorial waters' see PARA 289 at head (1) in the text.

11 Ie by virtue of an order under the Water Resources Act 1991 s 104(4): see PARA 289.

12 As to such classification see the Surface Waters (Dangerous Substances) (Classification) Regulations 1989, SI 1989/2286, reg 2(2). A system employing the classification DS2 is prescribed for these purposes, and the criterion for that classification is that the annual mean concentrations of the substances listed in reg 3(2), Sch 2 col 1 do not exceed the concentrations specified in Sch 2 col 2: regs 2(2), 3(2). This classification reflects the quality objectives mentioned in note 8, with the exception of a more stringent annual mean for cadmium and mercury.

13 As to the meaning of 'inland freshwaters' see PARA 289 at head (3) in the text.

14 As to such sampling see:

73 (1) the Surface Waters (Dangerous Substances) (Classification) Regulations 1992, SI 1992/337, reg 3(1), (2), which provides that samples must be taken in relation to such waters at a frequency sufficient to show any changes in the aquatic environment, having regard in particular to natural variations in hydrological conditions; where a discharge containing any substance listed in reg 2(2), Schedule col 1 is made to such waters, samples must be taken at a point sufficiently close to the discharge point to be representative of the quality of the aquatic environment in the area affected by the discharge (reg 3(3)); samples taken in relation to such waters must be analysed using the relevant reference methods of measurement specified in Schedule col 3 or other methods which have limits of detection, precision and accuracy at least as good (reg 3(4));

74 (2) the Surface Waters (Dangerous Substances) (Classification) Regulations 1997, SI 1997/2560, which provide that the Environment Agency must ensure that waters classified under those regulations are sampled at such sampling points and at such times, and samples are analysed in such manner, as the Agency considers necessary for (a) monitoring the effect on those waters of discharges containing the dangerous substances in question; and (b) determining the extent to which those waters are polluted by those substances and whether the requirements for the relevant classification are satisfied;

75 (3) the Surface Waters (Dangerous Substances) (Classification) Regulations 1998, SI 1998/389, reg 4, which makes similar provision in relation to those regulations as that set out in head (2) above.

15 As to such classification see:

76 (1) the Surface Waters (Dangerous Substances) (Classification) Regulations 1992, SI 1992/337, reg 2; a system employing the classification DS3 is prescribed for these purposes, and the relevant concentration is specified in Schedule col 2 (see reg 2(1), (2)); the classification DS3 reflects the quality objectives specified in EC Council Directive 90/415 (OJ L219, 14.8.90, p 49) amending EC Council Directive 86/280 (OJ L181, 04.07.86, p 16) Annex II on limit values and quality objectives for discharges of certain dangerous substances; that system is to be used for establishing water quality objectives under the Water Resources Act 1991 s 83 (see the Surface Waters (Dangerous Substances) (Classification) Regulations 1992, SI 1992/337, reg 4; and PARA 331);

77 (2) the Surface Waters (Dangerous Substances) (Classification) Regulations 1997, SI 1997/2560, reg 2 (inland freshwaters), reg 3 (coastal waters and relevant territorial waters); the classification DS4 and the criteria for that classification set out in Sch 1 apply for classifying inland freshwaters with a view to reducing the pollution of those waters by the dangerous

substances listed in Sch 1; and the classification DS5 and the criteria for that classification set out in Sch 2 apply for classifying coastal waters and relevant territorial waters with a view to reducing the pollution of those waters by the dangerous substances listed in Sch 2; those classifications are to be used for establishing water quality objectives under the Water Resources Act 1991 s 83 (see the Surface Waters (Dangerous Substances) (Classification) Regulations 1997, SI 1997/2560, reg 5; and PARA 331);

- 78 (3) the Surface Waters (Dangerous Substances) (Classification) Regulations 1998, SI 1998/389, reg 2 (inland freshwaters), reg 3 (coastal waters and relevant territorial waters); the classification DS6 and the criteria for that classification set out in Sch 1 apply for classifying inland freshwaters with a view to reducing the pollution of those waters by the dangerous substances listed in Sch 1; and the classification DS7 and the criteria for that classification set out in Sch 2 apply for classifying coastal waters and relevant territorial waters with a view to reducing the pollution of those waters by the dangerous substances listed in Sch 2; those classifications are to be used for establishing water quality objectives under the Water Resources Act 1991 s 83 (see the Surface Waters (Dangerous Substances) (Classification) Regulations 1998, SI 1998/389, reg 5; and PARA 331).

16 As to the meaning of 'relevant river or watercourse' see PARA 289 note 7.

17 The prescribed requirements are that (1) the 10 percentile of the saturation of dissolved oxygen must not be less than the value specified in respect of that classification in the Surface Waters (River Ecosystem) (Classification) Regulations 1994, SI 1994/1057, reg 1(2), Schedule col 2; (2) the 90 percentile of the biochemical oxygen demand must not exceed the value specified in respect of that classification in Schedule col 3; (3) the 90 percentile of the concentration of total ammonia must not exceed the value specified in respect of that classification in Schedule col 4; (4) the 95 percentile of the concentration of un-ionised ammonia must not exceed the value, if any, specified in respect of that classification in Schedule col 5; (5) the 5 percentile of the pH value must be less than the lower value, if any, specified in respect of that classification in Schedule col 6, and the 95 percentile of the pH value must not exceed the higher value, if any, so specified; (6) the 95 percentile of the concentration of dissolved copper must not exceed the value, if any, which is specified in respect of that classification in Schedule col 8 by reference to the hardness of the water as described in Schedule col 7; and (7) the 95 percentile of the concentration of total zinc must not exceed the value, if any, which is specified in respect of that classification in Schedule col 9 by reference to the hardness of the water as described in Schedule col 7: reg 2(2).

18 The Environment Agency must determine the following matters, ie (1) the frequency, location and methods of sampling; (2) the samples to be used, or to be disregarded, for the purpose of assessing whether any requirement specified in the Surface Waters (River Ecosystem) (Classification) Regulations 1994, SI 1994/1057, reg 2(2) (see note 17) is satisfied; (3) the requirements for analysis of samples; and (4) the methods of determining percentile values: see reg 3 (amended by virtue of the Environment Act 1995 Sch 22 para 233(1)).

19 See the Surface Waters (River Ecosystem) (Classification) Regulations 1994, SI 1994/1057, reg 2(1), (2). A system employing the classifications RE1, RE2, RE3, RE4 and RE5 is prescribed for these purposes and will be used for establishing quality objectives under the Water Resources Act 1991 s 83: see PARA 331.

20 For these purposes, 'bathing waters' means waters which are bathing water within the meaning of EC Council Directive 76/160 (OJ L31, 05.02.76, p 01) art 1(2) and other waters which are used for bathing: Bathing Waters (Classification) Regulations 1991, SI 1991/1597, reg 2(2). As from 24 March 2014 reg 2(2) is revoked by SI 2008/1097: from that date see the Bathing Water Regulations 2008, SI 2008/1097, regs 2(1), 3 (see below). Also note that EC Council Directive 76/160 is repealed (from 31 December 2014) and replaced (member state implementation measures to be in place by 24 March 2008) by European Parliament and EC Council Directive 2006/7 (OJ L64 4.3.2006 p 37) concerning the management of bathing water quality and repealing Directive 76/160: see PARA 29.

'Bathing water' means an area of surface water identified under the Bathing Water Regulations 2008, SI 2008/1097, reg 3: reg 2(1). For the purposes of the 2008 Regulations (1) the surface waters on the English list are identified as bathing waters in relation to England; and (2) the surface waters on the Welsh list are identified as bathing waters in relation to Wales: reg 3(1). The Secretary of State and the Environment Agency must publish the English list on their respective websites: reg 3(2). The Welsh Ministers and the Agency must publish the Welsh list on their respective websites: reg 3(3). For these purposes, (a) the 'English list' means the list entitled 'Bathing Waters (England) 2008', held at the principal office of the Department for Environment, Food and Rural Affairs (which is at Nobel House, 17 Smith Square, London SW1P 3JR); and (b) the 'Welsh list' means the list entitled 'Bathing Waters (Wales) 2008' deposited in the library of the Welsh Assembly Government at Cathays Park, Cardiff, CF10 3NQ: reg 3(4). As to the meaning of 'Welsh Ministers' see PARA 59 note 1.

The Bathing Water Regulations 2008, SI 2008/1097, cover the following matters: general provisions (see Pt 1 (regs 1-6, Sch 1, 2)); bathing water profiles (see Pt 2 (reg 7, Sch 2)); monitoring etc of bathing waters and public

information (see Pt 3 (regs 8, 9, Sch 3)); bathing water assessment and classification (see Pt 4 (regs 10, 11, Sch 4)); management of bathing waters (see Pt 5 (regs 12-15)); final provisions (see Pt 6 (regs 16-19)).

21 See the Bathing Waters (Classification) Regulations 1991, SI 1991/1597, reg 2(3), Sch 1. As from 24 March 2012 these provisions are replaced by new provisions: reg 2(3), (4) (prospectively substituted and added by SI 2008/1097). Also as from that date the Bathing Waters (Classification) Regulations 1991, SI 1991/1597, Sch 1 is revoked by SI 2008/1097. See note 21.

The criterion for a bathing water's achieving the classification BW1 is that at least 95% of samples of waters meet the parametric value of 2,000 per 100 millilitres for *Escherichia coli*: Bathing Waters (Classification) Regulations 1991, SI 1991/1597, reg 2(3) (as so prospectively substituted). For the purposes of reg 2(3), water samples are to be taken and tested in accordance with the sampling and testing procedures set out in the Bathing Water Regulations 2008, SI 2008/1097, Sch 3 Pt 1: Bathing Waters (Classification) Regulations 1991, SI 1991/1597, reg 2(4) (as so prospectively added).

22 See the Bathing Waters (Classification) Regulations 1991, SI 1991/1597, Sch 2. Samples must be taken in accordance with the requirements of Sch 3 in any year throughout the period beginning on 1 May and ending on 30 September, and additional samples must be taken during that period if there are grounds to suspect that the quality of the waters is deteriorating for any reason or is likely to deteriorate as a result of any discharge: Sch 2 paras 1, 2. All samples must be taken at the same point at the place in the particular waters where the daily average density of bathers is at its highest, and preferably 30 cm below the surface, except in the case of samples for testing for mineral oils, which must be taken at surface level: Sch 2 para 3. The methods of analysis and inspection specified in Sch 3, or methods which are at least as reliable, must be used for determining whether the parametric values there specified are met: Sch 2 para 4. As from 24 March 2012 Sch 2 and Sch 3 are revoked by SI 2008/1097. See also notes 20, 21.

23 See the Bathing Waters (Classification) Regulations 1991, SI 1991/1597, reg 2(1), (3) (amended in relation to England by SI 2003/1238 so as to refer to 'inland freshwaters', whereas in Wales the reference is to 'inland waters'). A system employing the classification BW1 is prescribed for these purposes, which reflects the mandatory standards concerning the quality of bathing water laid down in EC Council Directive 76/160 (OJ L31, 05.02.76, p 01) Annex. As from 24 March 2014 the Bathing Waters (Classification) Regulations 1991, SI 1991/1597, reg 2(1), (3) is revoked by SI 2008/1097. See also notes 20-22.

24 In the meaning of EC Council Directive 78/659 (OJ L222, 14.08.78, p 01) (see now European Parliament and EC Council Directive 2006/44 (OJ L264, 25.9.2006, p 20); and PARA 26).

25 See the Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331, regs 2, 3. The classifications SW ('salmonid waters') and CW ('cyprinid waters'), and the criteria for those classifications, set out in reg 2, Schedule apply for classifying inland freshwaters which need protection or improvement in order to support fish life: reg 2. Those classifications are to be used for establishing water quality objectives under the Water Resources Act 1991 s 83: see the Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331, reg 6(1); and PARA 331. Subject to reg 3(2), (3), any waters classified under those regulations are to be treated in relation to any period of 12 months as complying with the requirements specified in that Schedule for waters of the relevant class for any parameter if in that period in relation to those waters (1) in the case of the parameter for pH, non-ionised ammonia, total ammonium, total residual chlorine or total zinc, 95% of the samples taken for that parameter in accordance with reg 4 (see note 26) comply with the requirements; (2) in the case of the parameter for temperature or dissolved oxygen, the percentage specified in that Schedule of samples taken for that parameter in accordance with reg 4 below comply with the requirements: reg 3(1). When the frequency of sampling is lower than one sample per month for any parameter mentioned in head (1) above in relation to any waters classified under the 1997 Regulations, 100% of samples taken for that parameter in accordance with reg 4 in relation to those waters must comply with the requirements for that parameter specified in that Schedule for waters of the relevant class: reg 3(2). Non-compliant samples are, however, to be ignored for these purposes if they are the result of a flood or any other natural disaster: reg 3(3).

26 See the Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331, reg 4. The Environment Agency must ensure that waters classified under the 1997 Regulations are sampled and samples are analysed in accordance with the following provisions: reg 4(1). Samples in relation to any waters classified under those regulations must always be taken at the same sampling point: reg 4(2). The Agency must fix the exact position of the sampling point, and the depth at which samples are to be taken, having regard in particular to (1) the distance of the sampling point to the nearest point where pollutants are discharged; and (2) local environmental conditions: reg 4(3). Subject to reg 4(5) and reg 4(6), sampling for any parameter must be carried out at least at the minimum frequency specified in reg 2, Schedule for that parameter for waters of the relevant class: reg 4(4). Where the Agency's records show that the quality of any waters classified under the 1997 Regulations is appreciably higher for any parameter than the minimum required by those regulations for waters of that class, (a) the Agency may decide that the frequency of sampling may be reduced for that parameter; and (b) if there is no pollution or risk of deterioration in the quality of those waters, the Agency may decide that no sampling for that parameter is necessary: reg 4(5) (substituted by SI 2003/1053). Where sampling shows that the requirements of the Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331, reg 3 (see note 25) are not being complied with, the Agency must establish whether this is the result of chance, a natural

phenomenon or pollution and must adopt appropriate measures: reg 4(6). Samples for any parameter must be analysed using the reference methods of analysis specified in the Schedule to those regulations in relation to that parameter or methods which are at least as reliable as the reference methods: reg 4(7).

The Agency may derogate from the requirements of the 1997 Regulations: (i) in the case of requirements marked (0) in the Schedule thereto, because of exceptional weather or special geographical conditions; or (ii) where waters classified thereunder undergo natural enrichment in certain substances as a result of which they do not comply with the requirements specified in that Schedule for waters of the relevant class; and for these purposes 'natural enrichment' means a process whereby without human intervention a given body of water receives from the soil certain substances contained therein: reg 5(1), (2).

27 Ie for the purposes of European Parliament and EC Council Directive 2006/113 (OJ L376, 27.12.2006, p 14): see PARA 27.

28 See the Surface Waters (Shellfish) (Classification) Regulations 1997, SI 1997/1332, reg 2 (reg 2, Schedule amended by SI 2009/1266). The classification SFW and the criteria for that classification set out in reg 2, Schedule apply for classifying controlled waters which are such coastal or brackish waters and which need such protection or improvement as is mentioned in the text: reg 2. Subject to reg 3(2), (3), any waters classified under those regulations are to be treated in relation to any period of 12 months as complying with the requirements specified in the Schedule thereto for any parameter if in that period in relation to those waters (1) in the case of the parameter for organohalogenated substances or metals, 100% of the samples taken for that parameter in accordance with reg 4 (see note 29) comply with the requirements; (2) in the case of the parameter for salinity or dissolved oxygen, 95% of the samples taken for that parameter in accordance with reg 4 comply with the requirements; (3) in the case of any other parameter, 75% of the samples taken for that parameter in accordance with reg 4 comply with the requirements: reg 3(1). Where in accordance with reg 4(5) the frequency of sampling is reduced for any parameter in relation to any waters so classified, 100% of samples taken for that parameter in accordance with reg 4 in relation to those waters must comply with the requirements for that parameter specified in the Schedule: reg 3(2). Non-compliant samples must, however, be ignored for these purposes if they are the result of a disaster: reg 3(3).

29 See the Surface Waters (Shellfish) (Classification) Regulations 1997, SI 1997/1332, reg 4. The Environment Agency must ensure that waters classified under the 1997 Regulations are sampled and samples are analysed in accordance with the following provisions: reg 4(1). Samples in relation to any waters classified under those regulations must always be taken at the same sampling point: reg 4(2). The Environment Agency must fix the exact position of the sampling point, and the depth at which samples are to be taken, having regard in particular to (1) the distance of the sampling point to the nearest point where pollutants are discharged; and (2) local environmental conditions: reg 4(3). Subject to reg 4(5), (6), sampling for any parameter must be carried out at least at the minimum frequency specified in reg 2, Schedule in relation to that parameter: reg 4(4). Where the Agency's records show that the quality of any waters so classified is appreciably higher for any parameter than the minimum required by those regulations, the Agency may reduce the sampling frequency for that parameter or, if there is no pollution and no risk of deterioration of its quality, it may dispense with sampling for that parameter altogether: reg 4(5). Where sampling shows that the requirements of reg 3 are not being met, the Agency must establish whether this is the result of chance, a natural phenomenon or pollution and must adopt appropriate measures: reg 4(6). Samples for any parameter must be analysed using the reference methods of analysis specified in reg 2, Schedule in relation to that parameter or methods which are at least as reliable as the reference methods: reg 4(7). The Agency may derogate from the requirements of the 1997 Regulations in the event of exceptional weather or geographical conditions: reg 5.

30 Ie the Water Resources Act 1991 s 82. See also ss 83, 84; and PARAS 331, 332.

31 Ie European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy: see further PARA 23; and **WATER AND WATERWAYS** vol 100 (2009) PARA 7. As to details of River Basin Management see **WATER AND WATERWAYS** vol 100 (2009) PARA 198 et seq.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/7. POLLUTION OF WATER/(2) CONTROL OF POLLUTION UNDER DOMESTIC LEGISLATION/(v) Water Quality Objectives/331. Water quality objectives.

331. Water quality objectives.

For the purpose of maintaining and improving the quality of controlled waters¹, the Secretary of State or, in relation to Wales, the Welsh Ministers², may establish the water quality objectives³ for any waters which are, or are included in, waters of a prescribed description⁴ by serving on the Environment Agency⁵ a notice specifying one or more of the classifications prescribed for the time being⁶ and a date in relation to each specified classification⁷. Where the Secretary of State has or the Welsh Ministers have established water quality objectives under these provisions for any waters, he or they may review the objectives for those waters if either five years or more have elapsed since the service of the last such notice⁸ to be served in respect of those waters or the Agency requests a review after consultation with such water undertakers⁹ and such other persons as it considers appropriate¹⁰. The Secretary of State or the Welsh Ministers may not exercise the power to establish objectives for any waters by varying the existing objectives for those waters except in consequence of such a review¹¹.

Where the Secretary of State proposes or the Welsh Ministers propose to exercise the power to establish or vary the objectives for any waters, he or they must give notice¹² setting out his or their proposal and specifying the period, not being less than three months from the date of publication of the notice, within which representations or objections with respect to the proposal may be made, and must consider any representations or objections which are duly made and are not withdrawn¹³. If the Secretary of State decides or the Welsh Ministers decide, after considering any such representations or objections, to exercise the power to establish or vary those objectives, he or they may do so either in accordance with the proposal contained in the notice or in accordance with that proposal as modified in such manner as the Secretary of State considers or the Welsh Ministers consider appropriate¹⁴. Alternatively, if on such a review or in consequence of any representations or objections made following such a review, he or they decide that the water quality objectives for any waters should remain unchanged, he or they must serve notice of that decision on the Agency¹⁵. These consultation requirements¹⁶ do not, however, apply to the initial establishment of water quality objectives so far as they involve the specification of classification DS1 to inland waters or the classification DS2 to coastal waters and relevant territorial waters¹⁷. Nor do they apply to the establishment of water quality objectives under the duty to apply certain other water quality classifications¹⁸.

Although not repealed, in practice the provisions for water quality objectives including those discussed above¹⁹ have been superseded by the River Basin Management Plans provided for under the Water Framework Directive²⁰.

1 As to the meaning of 'controlled waters' see PARA 289.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 The water quality objectives for any waters to which a notice under these provisions relates are the satisfaction by those waters, on and at all times after each date specified in the notice, of the requirements which at the time of the notice were the requirements for the classification in relation to which that date is so specified: Water Resources Act 1991 s 83(2). See also PARA 330 note 3.

4 I.e. a description prescribed for the purposes of Water Resources Act 1991 s 82: see PARA 330.

5 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75. As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

6 le under the Water Resources Act 1991 s 82: see PARA 330.

7 Water Resources Act 1991 s 83(1) (s 83(1), (3), (5), (6) amended by the Environment Act 1995 Sch 22 para 128). The Water Resources Act 1991 s 83 has effect as if it imposed a duty on the Secretary of State or the Welsh Ministers to exercise the powers conferred thereby:

- 79 (1) to apply the classification BW1 to relevant territorial waters, coastal waters and inland waters in Wales or inland freshwaters in England which are bathing water within the meaning of EC Council Directive 76/160 (OJ L31, 05.02.76, p 01) art 1(2); and as if, in relation to the establishment of water quality objectives in pursuance of that duty, the Water Resources Act 1991 s 83(4), (5) were omitted (Bathing Waters (Classification) Regulations 1991, SI 1991/1597, reg 3 (amended in relation to England by SI 2003/1238); Water Consolidation (Consequential Provisions) Act 1991 Sch 2 para 1(1)-(3));
- 80 (2) to apply the classification DS3 to all relevant territorial waters, coastal waters and inland freshwaters; and as if, in relation to the establishment of water quality objectives in pursuance of that duty, the Water Resources Act 1991 s 83(4), (5) were omitted (Surface Waters (Dangerous Substances) (Classification) Regulations 1992, SI 1992/337, reg 4);
- 81 (3) to classify appropriately under the Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996, SI 1996/3001 (see PARA 330) such waters as are necessary to give effect to EC Council Directive 75/440 (OJ L194, 25.07.75, p 26) (repealed by European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) (see PARA 23) in England and Wales; and as if, in relation to the performance of that duty, the Water Resources Act 1991 s 83(4), (5) (see the text and notes 12-14) were omitted (Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996, SI 1996/3001, reg 7(1));
- 82 (4) to apply the classification DS4 to all inland freshwaters and the classification DS5 to all coastal waters and relevant territorial waters and to specify 1 April 1998 as the relevant date in each case; and as if, in relation to performance of that duty and the resulting water quality objectives, the Water Resources Act 1991 s 83(3)-(6) (reviews and consultation requirements) were omitted (Surface Waters (Dangerous Substances) (Classification) Regulations 1997, SI 1997/2560, reg 5);
- 83 (5) to classify appropriately under the Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331, such waters as are appropriate for the purpose of giving effect to European Parliament and EC Council Directive 2006/44 (OJ L264, 25.9.2006, p 20) (see PARA 26) in England and Wales; and as if, in relation to the performance of that duty, the Water Resources Act 1991 s 83(4), (5) were omitted (Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331, reg 6(1) (amended by SI 2009/1264));
- 84 (6) to classify under the Surface Waters (Shellfish) (Classification) Regulations 1997, SI 1997/1332, such waters as are appropriate for the purpose of giving effect to European Parliament and EC Council Directive 2006/113 (OJ L376, 27.12.2006, p 14) (see PARA 27) in relation to waters in or adjacent to England and Wales; and as if, in relation to the performance of that duty, the Water Resources Act 1991 s 83(4), (5) were omitted (Surface Waters (Shellfish) (Classification) Regulations 1997, SI 1997/1332, reg 6(1) (amended by SI 2009/1266));
- 85 (7) to apply the classification DS6 to all inland freshwaters and the classification DS7 to all coastal waters and relevant territorial waters and to specify 1 April 1998 as the relevant date in each case; and as if, in relation to performance of that duty and the resulting water quality objectives, the Water Resources Act 1991 s 83(3)-(6) (reviews and consultation requirements) were omitted (Surface Waters (Dangerous Substances) (Classification) Regulations 1998, SI 1998/389, reg 5).

In regard to head (1) above note that EC Council Directive 76/160 is repealed (from 31 December 2014) and replaced (member state implementation measures to be in place by 24 March 2008) by European Parliament and EC Council Directive 2006/7 (OJ L64 4.3.2006 p 37) concerning the management of bathing water quality and repealing Directive 76/160: see PARA 29. Also in regard to head (1) above as from 24 March 2015 the Bathing Waters (Classification) Regulations 1991, SI 1991/1597, reg 3 is revoked by SI 2008/1097. See also PARA 330 notes 20-23.

8 le under the Water Resources Act 1991 s 83(1) or (6): see the text and notes 5-7, 15.

9 As to the meaning of 'water undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 4.

10 Water Resources Act 1991 s 83(3)(a), (b) (as amended: see note 7). For the purposes of this review the Secretary of State or the Welsh Ministers may order an inquiry to be held pursuant to their powers under Environment Act 1995 s 53: see PARA 89.

11 Water Resources Act 1991 s 83(3) (as amended: see note 7).

12 The notice must be given by publishing it in such manner as the Secretary of State or the Welsh Ministers consider appropriate for bringing it to the attention of persons likely to be affected by it, and by serving a copy of the notice on the Environment Agency: Water Resources Act 1991 s 83(5) (as amended: see note 7). As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

13 Water Resources Act 1991 s 83(4)(a), (b).

14 Water Resources Act 1991 s 83(4). Presumably any variation to the published proposals would have to be in response to representations and objections received to the notice.

15 Water Resources Act 1991 s 83(6) (as amended: see note 7).

16 Ie the Water Resources Act 1991 s 83(4), (5): see the text and notes 12-14.

17 See the Surface Waters (Dangerous Substances) (Classification) Regulations 1989, SI 1989/2286, reg 4; and the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 para 1(1)-(3). As to the classifications DS1 and DS2 see PARA 321. As to the meaning of 'inland waters' see **WATER AND WATERWAYS** vol 100 (2009) PARA 187 note 2; and as to the meanings of 'coastal waters' and 'relevant territorial waters' see PARA 289.

18 See note 7.

19 Ie the Water Resources Act 1991 s 83. See also ss 82, 84; and PARAS 330, 332.

20 Ie European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy: see further PARA 23; and **WATER AND WATERWAYS** vol 100 (2009) PARA 7. As to details of River Basin Management see **WATER AND WATERWAYS** vol 100 (2009) PARA 198 et seq.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/7. POLLUTION OF WATER/(2) CONTROL OF POLLUTION UNDER DOMESTIC LEGISLATION/(v) Water Quality Objectives/332. General duties to achieve and maintain objectives.

332. General duties to achieve and maintain objectives.

It is the duty of the Secretary of State or, in relation to Wales, of the Welsh Ministers¹, and of the Environment Agency² to exercise the powers conferred on him, on them or on it under the water pollution provisions³ of the Water Resources Act in such manner as ensures, so far as it is practicable by the exercise of those powers to do so, that the water quality objectives specified for any waters in a notice served on the Agency under the relevant provisions⁴ are achieved at all times⁵. It is also the duty of the Agency, for the purposes of carrying out its functions under those water pollution provisions⁶, to monitor the extent of pollution in controlled waters⁷ and to consult, in such cases as it may consider appropriate, with the Scottish Environment Protection Agency⁸.

Although not repealed, in practice the provisions for water quality objectives including those discussed above⁹ have been superseded by the River Basin Management Plans provided for under the Water Framework Directive¹⁰.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

3 Ie excluding the Water Resources Act 1991 s 82, s 83 (see PARAS 330-331), s 104 (see PARA 289) and s 192 (see PARA 289 note 8): s 84(1). As to the meaning of 'water pollution provisions' see PARA 305 note 2.

4 Ie under the Water Resources Act 1991 s 83: see PARA 331.

5 Water Resources Act 1991 s 84(1) (s 84 amended by the Environment Act 1995 Sch 22 para 128). See also PARA 330 note 3.

6 The provisions mentioned in note 3 are not excluded from the definition of 'water pollution provisions' for these purposes: see the Water Resources Act 1991 s 84(2).

7 As to the meaning of 'controlled waters' see PARA 289.

8 Water Resources Act 1991 s 84(2) (as amended (see note 5); and amended by SI 1996/973). Generally Scottish matters are beyond the scope of this work.

9 Ie the Water Resources Act 1991 s 84. See also ss 82, 83; and PARAS 330, 331.

10 Ie European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy: see further PARA 23; and **WATER AND WATERWAYS** vol 100 (2009) PARA 7. As to details of River Basin Management see **WATER AND WATERWAYS** vol 100 (2009) PARA 198 et seq.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/7. POLLUTION OF WATER/(2) CONTROL OF POLLUTION UNDER DOMESTIC LEGISLATION/(vi) Byelaws/333. Power to make byelaws.

(vi) Byelaws

333. Power to make byelaws.

The Environment Agency¹ may by byelaws² make such provision as it considers appropriate for prohibiting or regulating:

- 498 (1) the washing or cleansing in any controlled waters³ of things of a description specified in the byelaws; and
- 499 (2) the keeping or use on any controlled waters of vessels⁴ of a description specified in the byelaws which are provided with water closets or other sanitary appliances⁵.

A person who contravenes any byelaws so made is guilty of an offence and liable to a fine⁶.

1 As to the Environment Agency see PARA 68 et seq.

2 As to the procedure for making byelaws generally see the Water Resources Act 1991 s 210(2), Sch 26; and **WATER AND WATERWAYS** vol 101 (2009) PARAS 606-607. A byelaw made for these purposes may be confirmed without a local inquiry only if (1) no written objection to its confirmation has been received by the Secretary of State or, in relation to Wales, by the Welsh Ministers (the 'relevant minister'); (2) every objection to its confirmation which has been so received has been withdrawn; or (3) in the opinion of the Secretary of State or the Welsh Ministers the person making the objection has no material interest in the controlled waters to which the byelaw relates; and in relation to any such byelaw Sch 26 para 2(1) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 606) has effect with the substitution for the words 'if the Agency consents' of the words 'after consultation with the Agency': Sch 26 para 2(3) (Schs 25, 26 amended by the Environment Act 1995 Sch 22 para 128). As to the meaning of the 'relevant minister' see **WATER AND WATERWAYS** vol 101 (2009) PARA 606 note 4. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the meaning of 'controlled waters' see PARA 289 (definition applied by the Water Resources Act 1991 Sch 25 para 4(2)).

4 As to the meaning of 'vessel' see **WATER AND WATERWAYS** vol 100 (2009) PARA 224 note 2.

5 Water Resources Act 1991 Sch 25 para 4(1) (as amended: see note 2). For these purposes, 'sanitary appliance', in relation to a vessel, means any appliance which (1) not being a sink, bath or shower bath, is designed to permit polluting matter to pass into the water where the vessel is situated; and (2) is prescribed for these purposes: Sch 25 para 4(2). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 221(1). At the date at which this title states the law, no description of sanitary appliance had been prescribed for these purposes and no regulations had effect as if prescribing such a description.

6 Water Resources Act 1991 s 211(3). Such a person is liable on summary conviction to a fine not exceeding level 4 on the standard scale, or such smaller sum as may be specified in the byelaws: see s 211(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. Sections 100, 101 (see PARAS 290, 291 note 18) have effect in relation to contraventions of such byelaws as they have effect in relation to contraventions of provisions of Pt III (ss 82-101) (see PARA 289 et seq): s 211(7). As from a day to be appointed, the wording of s 211(3) is revised to make different provision about byelaws under Sch 25 para 6 (relating to fisheries and not relevant here) but with no change about byelaws under Sch 25 para 4: s 211(3) (prospectively amended by the Marine and Coastal Access Act 2009 s 226). At the date at which this volume states the law no such day had been appointed.

UPDATE

333 Power to make byelaws

NOTE 6--Appointed day is 12 January 2010: SI 2009/3345.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/7. POLLUTION OF WATER/(2) CONTROL OF POLLUTION UNDER DOMESTIC LEGISLATION/(vii) Other Statutory Controls/334. Integrated pollution control.

(vii) Other Statutory Controls

334. Integrated pollution control.

Part I of the Environmental Protection Act 1990 introduced a system of integrated pollution control¹, which is gradually being replaced by regulations made under the system of integrated pollution prevention and control under the Pollution Prevention and Control Act 1999². These provisions, and the regulations made under them³, are discussed elsewhere in this work⁴.

1 le the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed). As to the prospective repeal and replacement of Pt I see PARA 159 note 2.

2 See in particular PARAS 186, 187. The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARAS 186 note 2; 662 et seq) are capable of regulating discharges into water.

3 See in particular the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; and note 2. The 2007 Regulations revoke and replace the Pollution Prevention and Control (England and Wales) Regulations 2000, SI 2000/1973.

4 See PARA 159 et seq.

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335. Control of the discharge of certain substances into groundwater.

The Groundwater (England and Wales) Regulations 2009¹ were made for the purposes of implementing in the United Kingdom² certain European Union legislation³. The Environment Agency, the Secretary of State⁴ and the Welsh Ministers⁵ must⁶ comply with the 2009 Regulations in exercising their functions in relation to permits⁷.

The Agency must, in granting a permit, take all necessary measures to prevent the input of any hazardous substance⁸ into groundwater⁹. The Agency must, in granting a permit, take all necessary measures to limit the input of non-hazardous pollutants¹⁰ into groundwater so as to ensure that such inputs do not cause pollution in groundwater¹¹. The Agency may also grant a permit for certain discharges¹².

When the Agency receives an application for a permit that might lead to the discharge of a pollutant, it must ensure that all necessary investigations have been carried out to ensure that it grants any permit in accordance with the relevant provisions¹³. If it grants a permit, it must include conditions requiring all necessary technical precautions to be observed to ensure that the objectives of those provisions are achieved¹⁴. A permit may not be granted without the relevant examination¹⁵ and without establishing whether the input of pollutants into groundwater is a satisfactory solution from the point of view of the environment¹⁶. A permit may only be granted if the Agency has checked that the groundwater (and, in particular, its quality) will undergo the requisite surveillance¹⁷.

A permit may be reviewed at any time¹⁸. The Agency must on review assess compliance with the conditions of the permit, and if the conditions are not complied with, the appropriate steps must be taken to ensure compliance including, if necessary, the revocation of the permit¹⁹.

It is an offence to cause or knowingly permit the discharge of any hazardous substance or non-hazardous pollutant in circumstances that might lead to an indirect input²⁰ of that hazardous substance or non-hazardous pollutant into groundwater unless it is carried on under and in accordance with a permit granted by the Agency²¹.

An application for a permit²² must be made to the Agency²³. If in any case the Agency considers that there are special reasons why the application should be advertised, it may require the applicant to advertise the application in a specified manner²⁴. A permit may be subject to conditions²⁵. If the Agency refuses an application for a permit it must give its reasons²⁶. The Agency may by notice in writing at any time vary or revoke the permit, but the notice must give the Agency's reasons²⁷. A revocation does not have effect until three months from the service of the notice²⁸. A person may within three months appeal against a refusal, variation or revocation of a permit to the Secretary of State or the Welsh Ministers as appropriate, but, unless the Secretary of State or the Welsh Ministers direct otherwise (1) a variation has effect pending the appeal; and (2) a revocation does not have effect pending the appeal²⁹.

For the purposes of discharging its functions under the 2009 Regulations, the Agency may, by notice served on any person, require that person to provide, in such form and within such period as is specified in the notice, the information specified in the notice³⁰. A notice may require a person to provide any information where that requirement is reasonable, including the provision of information (a) not in the person's possession; and (b) which would not usually come into the person's possession³¹. Failure to comply with a notice without reasonable excuse is an offence³².

Where (i) any person is carrying on, or proposing to carry on, any activity on or in the ground; and (ii) that activity might lead to the input into groundwater of any hazardous substance or non-hazardous pollutant, the Agency may serve notice in writing on that person prohibiting the carrying on of that activity³³. Failure to comply with a notice is an offence³⁴.

Any person who is aggrieved by a notice under the above provision³⁵ may within 21 days of service of the notice appeal to the Secretary of State or the Welsh Ministers as appropriate³⁶. The Secretary of State or the Welsh Ministers may cancel the notice or confirm it³⁷. The notice must be complied with pending appeal unless otherwise directed by the Secretary of State or the Welsh Ministers³⁸.

The Secretary of State or the Welsh Ministers may approve for the purposes of the 2009 Regulations codes of practice issued for the purpose of giving practical guidance to persons engaged in any activity that may result in discharging hazardous substances or non-hazardous pollutants on the steps they should take to prevent them from entering groundwater³⁹. The Agency must take into account whether or not such a code of practice is being or is likely to be complied with before taking any enforcement action under the 2009 Regulations⁴⁰. A code of practice must be publicised as the Secretary of State or the Welsh Ministers see fit⁴¹.

The Agency must, as soon as reasonably practicable, enter on registers maintained by it⁴² full particulars of relevant permits, notices and other information⁴³.

A person guilty of an offence relating to discharge of a hazardous substance or non-hazardous pollutant⁴⁴ or a prohibition notice⁴⁵ is liable to a fine or imprisonment or both⁴⁶. A person guilty of an offence relating to the provision of information⁴⁷ is liable to a fine or imprisonment or both⁴⁸.

Where a body corporate is guilty of an offence under the 2009 Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of (A) any director, manager, secretary or other similar person of the body corporate; or (B) any person who was purporting to act in any such capacity, that person is guilty of the offence as well as the body corporate⁴⁹.

Proceedings for an offence under the 2009 Regulations alleged to have been committed by a partnership or an unincorporated association may be brought in the name of the partnership or association⁵⁰. A fine imposed on a partnership or association on its conviction of an offence under the 2009 Regulations is to be paid out of the funds of the partnership or association⁵¹. Where an offence under the 2009 Regulations committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly⁵². Where an offence under the 2009 Regulations committed by an unincorporated association is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association, that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly⁵³.

1 le the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, which are made under the Pollution Prevention and Control Act 1999 s 2, Sch 1: see PARAS 186 note 2, 187. The 2009 Regulations came into force on 30 October 2009 and revoke and replace the Groundwater Regulations 1998, SI 1998/2746: see the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, regs 1, 25.

The 2009 Regulations do not apply in relation to the consequences of accidents or exceptional circumstances of natural cause that could not reasonably have been foreseen, avoided or mitigated: Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 5.

The Environment Agency may exempt from the requirement for a permit, in any specific case or class of case, a discharge or activity that would result in (1) an input of a pollutant into groundwater of a quantity and concentration so small as to obviate any present or future danger of deterioration in the quality of the receiving groundwater; (2) an input of a pollutant into groundwater that, for technical reasons, is incapable of being prevented or limited without using (a) measures that would increase risks to human health or to the quality of the environment as a whole; or (b) disproportionately costly measures to remove quantities of pollutants from,

or otherwise control their percolation in, contaminated ground or subsoil: reg 6(1). The Agency must keep a record of all exemptions granted under reg 6: reg 6(2). As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

'Permit' means any of the following in so far as they relate to groundwater (i) a permit under reg 13 (see the text and notes 20, 21); (ii) a discharge consent within the meaning of the Water Resources Act 1991 s 91(8) (see PARA 312); (iii) an environmental permit under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 662 et seq), except to the extent that it relates to a Part B activity within the meaning of those Regulations (see PARA 663 note 1); (iv) the registration of mobile radioactive apparatus under the Radioactive Substances Act 1993 s 10 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARAS 1447-1448); or (v) an authorisation for disposal in accordance with the Radioactive Substances Act 1993 s 13 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450): Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 2. 'Pollutant' means any substance liable to cause pollution; and 'pollution' means the direct or indirect introduction, as a result of human activity, of substances or heat into the air, water or land which may be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems, which result in damage to material property, or which impair or interfere with amenities and other legitimate uses of the environment: reg 2. 'Groundwater' means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil: reg 2.

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 The European Parliament and EC Council Directive 2006/118 (OJ L372 27.12.2006 p 19) on the protection of groundwater against pollution and deterioration (see PARA 28); and the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, are said to continue to implement European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy (see PARA 23).

4 As to the Secretary of State see PARA 58.

5 As to the Welsh Ministers see PARA 59.

6 The for the purposes of implementing European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) or European Parliament and EC Council Directive 2006/118 (OJ L372 27.12.2006 p 19): see note 3.

7 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 7.

8 A hazardous substance is any substance or group of substances that are toxic, persistent and liable to bio-accumulate: Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 3(1). This includes in particular the following when they are toxic, persistent and liable to bio-accumulate: (1) organohalogen compounds and substances which may form such compounds in the aquatic environment; (2) organophosphorous compounds; (3) organotin compounds; (4) substances and preparations, or the breakdown products of such, which have been proved to possess carcinogenic or mutagenic properties or properties which may affect steroidogenic, thyroid, reproduction or other endocrine-related functions in or via the aquatic environment; (5) persistent hydrocarbons and persistent and bioaccumulable organic toxic substances; (6) cyanides; (7) metals (in particular cadmium and mercury) and their compounds; (8) arsenic and its compounds; (9) biocides and plant protection products: reg 3(2). The Agency must publish a list of substances that it considers to be hazardous substances: reg 3(3).

9 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 8.

10 A non-hazardous pollutant is any pollutant other than a hazardous substance: Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 4.

11 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 9.

12 Notwithstanding the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 8, 9 (see the text and notes 8-11), provided it does not compromise the achievement of any of the environmental objectives relating to groundwater in European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) art 4, the Agency may grant a permit for: (1) the injection of water containing substances resulting from the operations for exploration and extraction of hydrocarbons or mining activities, and injection of water for technical reasons, into geological formations from which hydrocarbons or other substances have been extracted or into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that the injection does not contain substances other than those resulting from the above operations; (2) the reinjection of pumped groundwater from mines and quarries or associated with the construction or maintenance of civil engineering works; (3) the injection of natural gas or liquefied petroleum gas for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes; (4) the injection of natural gas or liquefied petroleum gas for storage purposes into other geological formations where there is an overriding need for security of gas supply, and where the injection is such as to prevent any present or

future danger of deterioration in the quality of any receiving groundwater; (5) construction, civil engineering and building works and similar activities on, or in the ground which come into contact with groundwater; (6) discharges of small quantities of substances for scientific purposes for characterisation, protection or remediation of water bodies limited to the amount strictly necessary for the purposes concerned; (7) reinjection into the same aquifer of water used for geothermal purposes; (8) inputs of pollutants that are the result of (a) interventions in surface waters for the purposes, amongst others, of mitigating the effects of floods and droughts, and for the management of waters and waterways; (b) artificial recharge or augmentation of groundwater bodies for the purposes of groundwater management: Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 10.

13 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 11(1). The reference is to reg 8 or 9: see the text and notes 8-11.

14 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 11(2). See note 13.

15 The examination of (1) the hydrogeological conditions of the area concerned; (2) the possible purifying powers of the soil and subsoil; and (3) the risk of pollution and alteration of the quality of the groundwater from the discharge: see the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 11(3).

16 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 11(3).

17 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 11(4).

18 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 12(1). All permits granted before the coming into force of the 2009 Regulations must be reviewed before 22 December 2012: reg 12(2).

19 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 12(3).

20 'Indirect input' in relation to groundwater means the introduction of a pollutant into groundwater after percolation through soil or subsoil: Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 2. 'Direct input' in relation to groundwater means the introduction of a pollutant into groundwater without percolation through soil or subsoil: reg 2.

21 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 13(1). The reference is to a permit granted by the Agency under reg 13.

However reg 13(1) does not apply in relation to: (1) a discharge that requires a discharge consent within the meaning of the Water Resources Act 1991 s 91(8) (see PARA 312); (2) the operation of a regulated facility under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 662 et seq); (3) a disposal that requires an authorisation under the Radioactive Substances Act 1993 s 13 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450); or (4) the keeping or use of mobile radioactive apparatus that requires a registration under s 10 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARAS 1447-1448): Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 13(1)(a)-(d).

An operator of a highway drain (or, until 1 January 2012, a person using a domestic septic tank or sewage treatment plant with a daily discharge of less than 2m³) does not commit an offence under reg 13 unless the Agency has served a notice on that person under reg 18 (see the text and notes 32, 33) in relation to that discharge, and the operator has failed to comply with that notice: reg 13(2). For these purposes, 'highway drain' means a drain which a highway authority or other person is entitled to keep open by virtue of the Highways Act 1980 s 100 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 285): Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 13(3).

The Water Resources Act 1991 s 88(1) (defences in relation to authorised discharges) (see PARA 294) applies in relation to a permit under the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 13 as if the reference to the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, included a reference to the Groundwater (England and Wales) Regulations 2009, SI 2009/2902: reg 14.

The Water Resources Act 1991 Sch 10 para 11 (transfer of discharge consents) (see PARA 317) applies in relation to a permit granted under the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 13 as if (a) any reference to a consent included a reference to such a permit; (b) references to the Water Resources Act 1991 Sch 10 paras 3, 6 were references to the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 13; and (c) references to carrying on or making discharges were references to carrying on the activities regulated by the permit: reg 15.

22 The Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 13.

23 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 16(1).

24 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 16(2).

- 25 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 16(3).
- 26 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 16(4).
- 27 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 16(5).
- 28 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 16(6).
- 29 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 16(7).
- 30 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 17(1).
- 31 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 17(2).
- 32 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 17(3).
- 33 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 18(1).
- 34 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 18(2).
- 35 Ie under the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 18.
- 36 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 19(1).
- 37 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 19(2).
- 38 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 19(3).
- 39 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 20(1).
- 40 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 20(2).
- 41 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 20(3).
- 42 Ie under the Water Resources Act 1991 s 190: see PARA 343.
- 43 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 21(1). The reference is to full particulars of (1) any permit under reg 13; (2) any application for such a permit; (3) any variation or revocation of such a permit; (4) any notice under reg 18; (5) any variation or revocation of any such notice; (6) any information furnished to the Agency for the purposes of reg 13 or reg 17; (7) any monitoring information provided in connection with any permit under reg 13; (8) any conviction for an offence under the 2009 Regulations; (9) any code of practice approved under the 2009 Regulations: see reg 21(1)(a)-(i).
Regulation 21(1) is subject to the Water Resources Act 1991 s 191A (exclusion from registers of information affecting national security) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 269) and s 191B (exclusion from registers of certain confidential information) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 270) but as if s 191B(2) referred to an application for a permit under the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 13: reg 21(2).
- 44 Ie under the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 13.
- 45 Ie under the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 18.
- 46 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 22(1). Such a person is liable (1) on summary conviction, to a fine not exceeding £50,000 or imprisonment for a term not exceeding 12 months, or to both; or (2) on conviction on indictment, to a fine or imprisonment not exceeding five years, or to both: see reg 22(1).
- 47 Ie under the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 17.
- 48 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 22(2). Such a person is liable (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both: see reg 22(2). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.
- 49 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 23(1). For these purposes, 'director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: reg 23(2).

50 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 24(1). For the purposes of such proceedings (1) rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate; (2) the Criminal Justice Act 1925 s 33 and the Magistrates' Courts Act 1980 Sch 3 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 666) apply in relation to the partnership or association as they apply in relation to a body corporate: Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 24(2).

51 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 24(3).

52 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 24(4). For these purposes, 'partner' includes a person purporting to act as a partner: reg 24(4).

53 Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 24(5). For these purposes, 'officer' means an officer of the association or a member of its governing body, or a person purporting to act in such capacity: reg 24(5).

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336. Urban waste water treatment.

It is the duty of the Environment Agency¹, in exercising its statutory functions relating to pollution offences², to secure:

- 500 (1) that the prescribed requirements of the Urban Waste Water Treatment (England and Wales) Regulations 1994³ are satisfied with respect to discharges from urban waste water treatment plants⁴;
- 501 (2) the limitation of pollution of receiving waters due to storm water overflows, with respect to any discharge from a collecting system⁵ or an urban waste water treatment plant⁶.

With respect to the discharge of sludge, such discharge to surface waters was to be phased out by 31 December 1998 and the total amount of toxic, persistent or bioaccumulable materials in the sludge which may be discharged to surface waters pursuant to consents granted under the Water Resources Act 1991⁷ was to be controlled by those consents and progressively reduced during the period ending on that date⁸.

At regular intervals, the Agency must review and, if necessary for the purpose of complying with these provisions, modify or revoke consents so granted⁹. All lakes and ponds are treated as controlled waters¹⁰ for the purposes of the provisions relating to offences of polluting controlled waters, in so far as those provisions relate to the discharge of waste water from urban waste treatment plants¹¹.

In every such consent granted on or after 31 December 2000 with respect to certain discharges of biodegradable industrial waste water¹² which does not enter urban waste water treatment plants before discharge to receiving waters, the Agency must impose conditions which are appropriate to the nature of the industry concerned for the discharge of such waste water¹³. It is also the Agency's duty, in exercising its functions to authorise discharges under Part I of the Environmental Protection Act 1990¹⁴ with respect to any process giving rise to such a discharge, to secure that any authorisation granted in respect of that process includes conditions in respect of the discharge of such waste water on or after 31 December 2000 which are appropriate to the nature of the industry concerned¹⁵. All lakes and ponds are treated as controlled waters for these purposes with respect to such discharges¹⁶.

¹ As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

² ie under the Water Resources Act 1991 Pt III Ch II (ss 85-91): see PARA 291 et seq.

³ The prescribed requirements are set out in the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, regs 5, 6(1). The 1994 regulations were made under the European Communities Act 1972 s 2(2) and implement the Urban Waste Water Treatment Directive (ie EC Council Directive 91/271 (OJ L135, 30.05.91, p 40) concerning urban waste-water treatment): see PARA 30.

Treatment plants which provide secondary treatment or an equivalent treatment were to be provided by 31 December 2000 or, in an exceptional case, such later date (not being later than 31 December 2005) as the European Commission may agree, in respect of all discharges from agglomerations with a population equivalent of more than 15,000: Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 5(1)(a). They must be provided (1) by 31 December 2005 in respect of all discharges from agglomerations with

a population equivalent of between 10,000 and 15,000; and (2) by 31 December 2005 in respect of all discharges to freshwaters and estuaries from agglomerations with a population equivalent of between 2,000 and 10,000: reg 5(1)(b), (c). Treatment plants which provide more stringent treatment than that described in reg 5(1) were, however, to be provided by 31 December 1998 in respect of all discharges from agglomerations with a population equivalent of more than 10,000 into sensitive areas, or into the relevant catchment areas of sensitive areas where the discharges contribute to the pollution of these areas; but this does not apply in relation to a sensitive area where the Environment Agency has certified that it is satisfied, as a result of monitoring, that the minimum percentage of reduction of the overall load entering all urban waste water treatment plants in that area, and all urban waste water treatment plants in the catchment area of that area the discharges from which contribute to the pollution of that area, is at least 75% for total phosphorus and at least 75% for total nitrogen: reg 5(2), (3) (Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, amended by the Environment Act 1995 Sch 22 para 233(1)). Where, following a review of the identification of waters as sensitive areas or high natural dispersion areas under the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 3, an area ceases to be identified as a high natural dispersion area or becomes identified as a sensitive area, then, as respects that area, reg 5(1) or, as the case may be, reg 5(2) has effect as if the relevant date specified therein were the seventh anniversary of the change of identification or, if later, the date so specified: reg 5(4). Discharges of urban waste water from agglomerations with a population equivalent of between 10,000 and 150,000 (or, in an exceptional case and with the agreement of the European Commission, of more than 150,000) to coastal waters which are in high natural dispersion areas, and discharges from agglomerations with a population equivalent of between 2,000 and 10,000 into estuaries which are in high natural dispersion areas, may be subjected to less stringent treatment than that described in reg 5(1) so long as (a) the discharges receive at least primary treatment in conformity with the control procedures set out in Sch 3 Pt II; and (b) the Agency has certified that it is satisfied that comprehensive studies have indicated that such discharges will not adversely affect the environment: reg 5(5) (as so amended). The Agency must provide the Secretary of State or, in relation to Wales, the Welsh Ministers with information concerning the studies mentioned in head (b) above: see reg 5(6) (as so amended).

Appropriate treatment of urban waste water entering collecting systems must be provided by 31 December 2005 in respect of (i) discharges to freshwaters and estuaries from agglomerations with a population equivalent of less than 2,000; and (ii) discharges to coastal waters from agglomerations with a population equivalent of less than 10,000: reg 5(7). For these purposes, 'appropriate treatment' means treatment of urban waste water by any process and/or disposal system which after discharge allows the receiving waters to meet the relevant quality objectives and the relevant provisions of the Urban Waste Water Treatment Directive and other Community Directives; and 'primary treatment' means treatment of urban waste water by a physical and/or chemical process involving settlement of suspended solids, or other processes in which the five-day biochemical oxygen demand ('BOD5') of the incoming waste water is reduced by at least 20% before discharge and the total suspended solids of the incoming waste water are reduced by at least 50%: reg 5(8). 'Agglomeration' means an area where the population and/or economic activities are sufficiently concentrated for urban waste water to be collected and conducted to an urban waste water treatment plant or to a final discharge point; and 'coastal waters' means the waters outside the low-water line or the outer limit of an estuary: reg 2(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

Discharges from urban waste water treatment plants described in the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 5(1) or (2), or from any such plant which provides treatment in accordance with reg 5(5), including any such plants which are provided other than by sewerage undertakers, must satisfy the relevant requirements of Sch 3 Pt I: reg 6(1).

Subject to the following provisions, 'sensitive area' means an area of water which the Secretary of State or the Welsh Ministers have identified in accordance with the criteria set out in Sch 1, and which is shown as such on maps deposited with the Agency for these purposes; and 'high natural dispersion area' means an area of water which the Secretary of State or the Welsh Ministers have identified in accordance with the criteria set out in Sch 1 Pt II, and which is shown as such on maps deposited with the Agency for these purposes; the Secretary of State was to review the identification of sensitive areas and high natural dispersion areas, in accordance with the relevant criteria in Sch 1, no later than 31 December 1997 and he and the Welsh Ministers are to do so thereafter at intervals of no more than four years: see reg 3(1), (2) (as so amended; further amended by SI 2003/1788). Where the appropriate authority (ie the Secretary of State or the Welsh Ministers) decides on such a review that any area of water identified as a sensitive area or as a high natural dispersion area should no longer be identified as such, or that any area of water not previously identified as a sensitive area or as a high natural dispersion area should be identified as such, the authority must give notice in writing to the Agency informing the Agency of its decision and the date on which it takes effect: Urban Waste Water Treatment (England and Wales) (Amendment) Regulations 2003, SI 2003/1788, regs 1(2), 2(1). Before its decision takes effect, the appropriate authority must publish the notice through its website and also, if the notice relates to England, in the London Gazette and, if the notice relates to Wales, in at least one daily newspaper circulating throughout that part of Wales to which the notice relates: reg 2(2)(a). It must ensure that revised maps are deposited with the Agency reflecting the authority's decision and indicating the date on which the decision takes effect; and must take such other steps as it considers appropriate to publicise its decision: reg 2(2)(b), (c). A decision on such a review takes effect on the date stated in the appropriate authority's notice and continues in force until a subsequent decision changing it following such a review takes effect: reg 2(3).

The appropriate authority and the Agency must each ensure that its website makes available to the public (A) maps of all areas of water currently identified as a sensitive area or as a high natural dispersion area; and (B) the dates on which any area of water was identified as a sensitive area or high natural dispersion area, or ceased to be so identified: reg 3(1). The Agency must keep available at its principal office and at each of its principal regional offices for inspection by the public at all reasonable times free of charge the maps showing sensitive areas and high natural dispersion areas deposited with the Environment Agency for the purposes of reg 2 (together with any maps previously deposited for the purposes of the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 3) and the information mentioned in head (B) above in documentary form: Urban Waste Water Treatment (England and Wales) (Amendment) Regulations 2003, SI 2003/1788, reg 3(2).

4 See the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 6(2)(a), (b). 'Urban waste water' means domestic waste water or the mixture of domestic waste water with industrial waste water and/or run-off rain water; 'industrial waste water' means any waste water which is discharged from premises used for carrying on any trade or industry, other than domestic waste water and run-off rain water; and 'domestic waste water' means waste water from residential settlements and services which originates predominantly from the human metabolism and from household activities: reg 2(1).

5 'Collecting system' means a system of conduits which collects and conducts urban waste water: Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 2(1).

6 See the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 6(2)(c).

7 See note 2.

8 See the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 6(2)(d). The dumping of sludge from ships to surface waters was also to be phased out by 31 December 1998: see reg 9.

9 Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 6(3) (as amended: see note 3). Nothing in the Water Resources Act 1991 s 88(2), Sch 10 para 8 (see PARA 306) restricts the Agency's power to modify or revoke a consent in pursuance of the duty so imposed: Urban Waste Water Treatment (England and Wales) Regulations 1994 SI 1994/2841, reg 6(4) (as so amended).

10 Ie for the purposes of the Water Resources Act 1991 s 85: see PARA 291. As to the meaning of 'controlled waters' see PARA 289.

11 Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 6(5).

12 Ie discharges from plants representing 4,000 population equivalent or more belonging to the prescribed industrial sectors (ie milk processing, manufacture of fruit and vegetable products, manufacture and bottling of soft drinks, potato processing, meat industry, breweries, production of alcohol and alcoholic beverages, manufacture of animal feed from plant products, manufacture of gelatine and of glue from hide, skin and bones, malt-houses and fish-processing industry): see the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 8(1), Sch 5. 'Population equivalent' is a measurement of organic biodegradable load, and a population equivalent of 1 (1 pe) is the organic biodegradable load having a five-day biochemical oxygen demand (BOD5) of 60g of oxygen per day, calculated on the basis of the maximum average weekly load entering the treatment plant during the year, excluding unusual situations such as those due to heavy rain: reg 2(1).

13 See the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 8(1), (2) (as amended: see note 3). Nothing in the Water Resources Act 1991 Sch 10 para 8 (see PARA 306) restricts the Agency's power to modify a consent in pursuance of the duty so imposed: Urban Waste Water Treatment (England and Wales) Regulations 1994 SI 1994/2841, reg 8(2) (as so amended).

14 See the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed); PARA 334; and see PARA 159 et seq.

15 See the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 8(3) (as amended: see note 3).

16 See Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 8(4).

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337. Remediation notices in respect of contaminated land.

Under the Environment Act 1995, the Environment Agency¹ or a local authority² may serve remediation notices³ in respect of contaminated land⁴ where pollution of controlled waters⁵ is being, or is likely to be, caused⁶. These powers are dealt with in detail elsewhere in this title⁷.

1 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 As to the meaning of 'local authority' see PARA 99.

3 As to remediation notices see the Environmental Protection Act 1990 s 78E; and PARA 766.

4 As to the meaning of 'contaminated land' see PARA 761.

5 As to the meaning of 'pollution of controlled waters' see PARA 761 note 6.

6 See the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC); and PARA 761 et seq.

7 See PARA 761 et seq.

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338. Anti-fouling paints etc.

Obligations in regard to such matters as the sale of anti-fouling paint and related treatments are now covered by the REACH Enforcement Regulations 2008¹. These Regulations were made for the purposes of enforcing a European Union Regulation² concerning the registration, evaluation, authorisation and restriction of chemicals ('REACH') and are also referred to elsewhere in this title³ and elsewhere in this work⁴.

1 The REACH Enforcement Regulations 2008, SI 2008/2852. As to introduction see Pt 1 (regs 1, 2); as to enforcement see Pt 2 (regs 3-6); as to exemptions see Pt 3 (regs 7, 8); as to enforcement powers and civil proceedings see Pt 4 (regs 9, 10); as to offences and penalties see Pt 5 (regs 11-20); as to appeals against notices and service of documents see Pt 6 (regs 21, 22); and as to revocations and amendments see Pt 7 (reg 23). More particularly, under reg 2, the enforcing authorities are the Department of the Environment, the Environment Agency, the Health and Safety Executive, the Health and Safety Executive for Northern Ireland, a local (consumer safety) authority, a local (health and safety) authority, the Scottish Environment Protection Agency and the Secretary of State. Regulation 3 imposes enforcement duties on enforcing authorities to enforce those provisions of REACH listed in Sch 1. Regulation 4 requires enforcing authorities to cooperate and share information with other bodies connected to REACH enforcement and provides for information sharing by the Commissioners for Revenue and Customs. Regulation 5 provides for agreements between enforcing authorities under which one authority may act on behalf of another authority. Regulation 6 provides for arrangements between enforcing authorities responsible for the enforcement of health and safety aspects of REACH. Regulation 7 provides for defence exemption certificates. Regulation 8 makes provision for an exemption for the marketing and use of leaded paint. Regulation 9 provides for the powers of enforcing authorities as set out in Sch 6 and reg 10 provides for those persons authorised to act as authorised persons for those authorities. Regulation 11 creates criminal offences and reg 12 provides for penalties in respect of those offences. Further criminal offences are created under reg 13 and penalties in respect of those offences are set out in reg 14. Regulation 15 provides for the liability of corporate bodies. Under reg 16 a court may require persons convicted of an offence under the 2008 Regulations to remedy those matters for which they were convicted. Under reg 17 persons authorised by the Health and Safety Executive or the Health and Safety Executive for Northern Ireland may, except in Scotland, prosecute an offence under the 2008 Regulations. Regulation 18 provides that no criminal proceedings for an offence under the 2008 Regulations may be instituted in England and Wales except by an enforcing authority or by or with the consent of the Director of Public Prosecutions and in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland. Regulation 19 provides the Crown is not criminally liable for any contravention of the 2008 Regulations. Under reg 20 enforcing authorities may institute civil proceedings against a person where criminal proceedings are unlikely to result in an effective remedy. Regulation 21 provides for appeals against notices issued by enforcing authorities. Regulation 22 and Sch 9 provide for service of documents. Schedule 1 contains a table listing provisions of REACH (see the text and notes 2, 3) which enforcing authorities must enforce. Schedule 2 sets out the functions of enforcing authorities. The REACH Enforcement Regulations 2008, SI 2008/2852, Sch 3 (amended by SI 2009/716) provides for arrangements between enforcing authorities responsible for the enforcement of health and safety aspects of REACH. The REACH Enforcement Regulations 2008, SI 2008/2852, Sch 4 provides for matters in connection with defence exemption certificates. Schedule 5 provides for matters in relation to leaded paint. Schedule 6 sets out the powers of enforcing authorities. Schedule 7 sets out those provisions under other enactments which enable a person to act as an authorised person of an enforcing authority under the 2008 Regulations. Schedule 8 contains provisions relating to appeals against notices issued by enforcing authorities. See also PARA 790.

2 European Parliament and EC Council Regulation 1907/2006 (OJ L136, 29.5.2007, p 3) concerning the registration, evaluation, authorisation and restriction of chemicals ('REACH'): see PARA 35.

3 See PARA 790.

4 See **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARAS 571, 574 et seq.

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339. Liquid radioactive waste.

The disposal of radioactive waste is regulated by the Radioactive Substances Act 1993¹. Where any of the activities comprising a prescribed process² are regulated both by an authorisation granted by the Environment Agency³ under Part I of the Environmental Protection Act 1990⁴ and by a registration or an authorisation under the 1993 Act, then if different obligations are imposed as respects the same matter by a condition attached to an authorisation under the 1990 Act and a condition attached to the registration or authorisation under the 1993 Act, the condition imposed by the authorisation under the 1990 Act is treated as not binding the person carrying on the process⁵.

Except as provided by regulations made by the Secretary of State or, in relation to Wales, by the Welsh Ministers⁶, nothing in Part III of the Water Resources Act 1991⁷ applies in relation to radioactive waste⁸. The Secretary of State or the Welsh Ministers may, however, by regulations provide for prescribed provisions of the 1991 Act to have effect with such modifications⁹ as he or they consider appropriate for dealing with such waste, and make such modifications of the 1993 Act or, in relation to such waste, of any other enactment¹⁰, as he or they consider appropriate in consequence of the provisions of Part III of the Water Resources Act 1991 and of any regulations so made¹¹. Discharges of liquid radioactive waste thus require the consent of the Agency¹². Additionally, no account is to be taken of any radioactivity possessed by any substance or article or by any part of any premises for the purposes of certain pollution control provisions of the Water Industry Act 1991 and the Water Resources Act 1991¹³.

1 See **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450 et seq. As to radioactive contamination under the regime on contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379; and PARA 761 et seq.

2 As to the meaning of 'prescribed process' for these purposes see PARA 159 note 2.

3 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

4 Ie under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed): see PARA 334; and see PARA 159 et seq.

5 See the Environmental Protection Act 1990 s 28(2) (prospectively repealed); and PARA 165.

6 Ie under the Water Resources Act 1991 s 98 (amended by the Radioactive Substances Act 1993 Sch 4 para 11): see the text and notes 9-11. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

7 Ie the Water Resources Act 1991 Pt III (ss 82-104): see PARA 289 et seq.

8 Water Resources Act 1991 s 98(1) (as amended: see note 6).

9 As to the meaning of 'modifications' see **WATER AND WATERWAYS** vol 100 (2009) PARA 141 note 20.

10 As to the meaning of 'enactment' see **WATER AND WATERWAYS** vol 100 (2009) PARA 14 note 31.

11 Water Resources Act 1991 s 98(2) (as amended: see note 6). At the date at which this title states the law, no such regulations had been made, but, by virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 para 1(1), (2), the Control of Pollution (Radioactive Waste) Regulations 1989, SI 1989/1158, have effect as if so made: see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1451.

12 See the Control of Pollution (Radioactive Waste) Regulations 1989, SI 1989/1158 reg 3, Schedule; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1451.

13 See the Radioactive Substances Act 1993 s 40(2)(a), Sch 3 Pt I; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1463.

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340. Pollution by gas washings.

Any person engaged in the manufacture of gas who (1) causes or suffers to be brought or to flow into any stream, reservoir, aqueduct, pond or place for water, or into any drain or pipe communicating with it, any washing or other substance produced in making or supplying gas; or (2) wilfully does any act connected with the making or supplying of gas by which the water in any such stream, reservoir, aqueduct, pond or place for water is fouled, commits an offence¹. A person is not, however, guilty of an offence under this provision in respect of any entry of matter into any controlled waters² which occurs under and in accordance with a consent for the discharge under the Water Resources Act 1991³ or as a result of any act or omission under and in accordance with such a consent⁴.

1 See the Public Health Act 1875 s 68(1), (2). The penalty is a fine not exceeding level 4 on the standard scale: see s 68(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. In an appropriate case an injunction will be obtainable to prevent the illegal pollution of water: *Batcheller v Tunbridge Wells Gas Co* (1901) 84 LT 765, 65 JP 680.

2 As to the meaning of 'controlled waters' see PARA 289.

3 Ie a consent under the Water Resources Act 1991 Pt III (ss 82-104): see PARA 289 et seq.

4 Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 1.

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341. Fouling of water by cemetery company.

Where a cemetery company which is not a local authority was established, before 1 April 1974, by a special Act incorporating the Cemeteries Clauses Acts 1847¹, that company is liable to a penalty if it causes or suffers to be brought or to flow into any stream, canal, reservoir, aqueduct, pond or watering place, any offensive matter from the cemetery, whereby the water in it is fouled². In addition, any person having the right to use the water which has been fouled has a right of action against the company³.

1 See the Cemeteries Clauses Act 1847 s 20. As to the incorporation of that Act and its restricted application, as mentioned in the text, see **CREMATION AND BURIAL** vol 10 (Reissue) PARA 910.

2 Cemeteries Clauses Act 1847 s 20. The penalty is £50 and may be recovered by any person having the right to use the water fouled by the offensive matter in question: see ss 20, 21.

3 See the Cemeteries Clauses Act 1847 s 22.

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342. Control of pollution of water under private Acts.

As well as the control of pollution of controlled waters under the Water Resources Act 1991 and other public legislation, there are numerous private Acts which regulate particular rivers or expanses of water and contain, inter alia, measures to control the pollution of those waters in addition to those contained in public legislation¹. For example, the Environment Agency² is entitled to exercise certain water pollution functions conferred upon the former Conservators of the River Thames and the former Lee Conservancy Catchment Board³ under local statutory provisions, so far as they are continued in force⁴.

¹ As to such Acts see generally **WATER AND WATERWAYS** vol 100 (2009) PARA 14; and as to pollution control in the London area see **LONDON GOVERNMENT**. There are also numerous Harbour Acts which control pollution of waters within those harbours: see generally **PORTS AND HARBOURS**. The Port of London Authority retains the power to remove anything which is in or beside the Thames in contravention, or as a result of a contravention, of the prohibition on pollution of the Thames and docks: see the Port of London Act 1968 s 200; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARAS 623-627.

² As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

³ Functions under the Thames Conservancy Acts 1932, 1950, 1959, 1966 and 1972 were formerly exercised by the Conservators of the River Thames. The Conservators of the River Thames and the Lee Conservancy Catchment Board ceased to exist on 1 April 1974: Water Act 1973 s 33(d) (repealed). Their functions were transferred to the Thames Water Authority (see the Water Act 1973 s 2, Sch 1 (repealed); and the Thames Water Authority Constitution Order 1973, SI 1973/1360, art 3(1)(a)); and then to the former National Rivers Authority; but are now exercisable by the Environment Agency. As to the transfer of functions from the National Rivers Authority to the Environment Agency see the Environment Act 1995 s 2; and PARA 70. In any subordinate legislation or local statutory provisions, for any reference to the National Rivers Authority there is substituted a reference to the Environment Agency: s 120(1), Sch 22 para 233(1). As to the meaning of 'local statutory provision' see **WATER AND WATERWAYS** vol 100 (2009) PARA 14 note 24.

⁴ The provisions contained in the Thames Conservancy Acts 1932 to 1972 are local statutory provisions, and were applied to the Thames Water Authority (now the Environment Agency: see note 3) by virtue of the Water Act 1973 s 34(2), Sch 6 Pt II (repealed). Local statutory provisions are continued in force subject to any necessary modifications; and continue to apply to, but only to, the area, things or persons to which or to whom they applied before 1 April 1974: Sch 6 para 11 (repealed with savings). See the Lee Conservancy Act 1868 ss 3, 14, 89, 91, 92, 96; the Lee Conservancy Act 1900 ss 27, 32; the Lee Conservancy Act 1938 s 20; the Thames Conservancy Act 1932 ss 120-124, 129, 131, 233, 234, 242; the Thames Conservancy Act 1950 ss 18, 24; the Thames Conservancy Act 1972 s 14; and **LONDON GOVERNMENT**.

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(3) REGISTERS AND INFORMATION

343. Pollution control register.

It is the duty of the Environment Agency¹ to maintain, in accordance with regulations made by the Secretary of State or, in relation to Wales, by the Welsh Ministers², registers containing prescribed particulars of or relating to:

- 502 (1) any notices of water quality objectives or other notices served under the provisions relating thereto³;
- 503 (2) applications made for consents under the provisions relating to water pollution⁴;
- 504 (3) consents given under those provisions and the conditions to which they are subject⁵;
- 505 (4) samples of water or effluent⁶ taken by the Agency for the purposes of any of the water pollution provisions⁷ of the Water Resources Act 1991, information produced by analyses of those samples, and the steps taken in consequence of any such information⁸;
- 506 (5) such information with respect to samples of water or effluent taken by any other person, and the analyses of those samples, as is acquired by the Agency from any person under arrangements made by the Agency for the purposes of any of the water pollution provisions, and the steps taken in consequence of any such information⁹;
- 507 (6) applications made to the Agency for the variation of discharge consents¹⁰;
- 508 (7) enforcement notices¹¹, revocations of discharge consents¹² and appeals¹³;
- 509 (8) directions given by the Secretary of State or the Welsh Ministers in relation to the Agency's functions under the water pollution provisions, with the exception of directions in relation to information affecting national security¹⁴;
- 510 (9) convictions for offences in relation to pollution¹⁵ of persons who have the benefit of discharge consents;
- 511 (10) information obtained or furnished in pursuance of conditions of discharge consents¹⁶;
- 512 (11) works notices¹⁷, appeals relating to works notices¹⁸ and convictions for offences of failing to comply with works notices¹⁹; and
- 513 (12) such other matters relating to the quality of water or the pollution of water as may be prescribed by the Secretary of State or the Welsh Ministers²⁰.

Where registers are to contain any prescribed particulars, those particulars must be entered on the registers:

- 514 (a) if they relate to an application or notice which is to be advertised²¹, before the beginning of the period of 28 days during which the application or notice is required to be advertised;
- 515 (b) if they relate to an enforcement notice²² or a works notice²³, not later than seven days after that notice is served;
- 516 (c) if they relate to certain appeals²⁴, not later than 14 days after those particulars become available to the Agency; and

517 (d) in all other cases, not later than 28 days after those particulars become available to the Agency²⁵.

Where an application for a consent, or for the variation of a consent, is withdrawn at any time before it is determined, no further particulars relating to the application are to be entered on the registers after the application is withdrawn and all particulars relating to it must be removed from the registers not less than two months, and not more than three months, after the application is withdrawn²⁶.

The Agency must keep records in each register showing the dates on which particulars are entered on it²⁷ and each register must be indexed in a way which facilitates access to particulars entered on it²⁸. Nothing in the relevant regulations, however, requires the Agency to keep on a register monitoring information²⁹ more than four years after that information was entered on the register or other information which has been superseded by later information more than four years after that later information was entered on it³⁰.

Where information of any description is excluded from any register by virtue of its being commercially confidential³¹, a statement must be entered in the register indicating the existence of information of that description³².

It is the Agency's duty to secure that the contents of registers maintained by it under these provisions are available, at all reasonable times, for inspection by the public free of charge, and to afford members of the public reasonable facilities for obtaining from the Agency, on payment of reasonable charges, copies of entries in any of the registers³³.

The Secretary of State or the Welsh Ministers may give directions to the Agency requiring the removal from any register so maintained by it of any specified information which is not prescribed for inclusion under heads (1) to (12) above or which ought to have been excluded from the register³⁴ on the grounds of national security or because it is commercially confidential³⁵.

1 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 The Water Resources Act 1991 s 101 (limitation for summary offences) (see PARA 291 note 18) has effect in relation to any regulations so made as it has effect in relation to any subordinate legislation under Pt III (ss 82-104): s 190(3). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. For the regulations so made see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, regs 15-17; and notes 3-30.

3 Ie any notices served under the Water Resources Act 1991 s 83: see PARA 331. The register must contain full particulars of any such notice: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(a). As to access to environmental information generally see PARA 55.

4 Ie applications for consents under the Water Resources Act 1991 Pt III Ch II (ss 85-91): see PARA 291 et seq. The registers must contain full particulars of applications for consents, or for the variation of consents, together with information provided in connection with such applications: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(b).

5 Full particulars must be given of such consents, the conditions to which they are subject and any variation of them: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(c).

6 As to the meaning of 'effluent' see **WATER AND WATERWAYS** vol 100 (2009) PARA 262 note 31.

7 As to the meaning of 'water pollution provisions' see PARA 305 note 2.

8 The registers must contain full particulars of (1) the date and time of each sample, including details of the place where it was taken; (2) the result of its analysis; and (3) the steps, if any, taken by the Agency in consequence: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(d).

9 The registers must contain full particulars of information corresponding to that mentioned in note 8 with respect to samples of water or effluent taken by any other person, and the analysis of those samples, acquired by the Environment Agency from that person under arrangements made by the Agency for the purposes of any of the water pollution provisions, including any steps taken by that person in consequence of the results of the analysis of any sample: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(e).

10 'Discharge consent' has the same meaning as in the Water Resources Act 1991 s 91 (see PARA 310 note 2): s 190(5) (added by the Environment Act 1995 Sch 22 para 169(6)).

11 If served under the Water Resources Act 1991 s 90B: see PARA 310. Full particulars of such notices must be given: see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(g).

12 If under the Water Resources Act 1991 Sch 10 para 7: see PARA 306. Full particulars of such revocations must be given: see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(h).

13 If under the Water Resources Act 1991 s 91: see PARAS 311-312. Full particulars must be given of notices of appeal, correspondence provided to the Secretary of State or the Welsh Ministers under the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 8(3) (see PARA 312), the decisions or notices which are the subject matter of the appeals, representations made under reg 10, written notifications of the Secretary of State's determination of appeals and reports accompanying any such notification: reg 15(i).

14 If directions under the Water Resources Act 1991 s 191A(2): see **WATER AND WATERWAYS** vol 100 (2009) PARA 269. With that exception, full particulars of any such directions must be given: see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(j).

15 If offences under the Water Resources Act 1991 Pt III: see PARA 291 et seq. Full particulars of such convictions must be given, including the name of the offender, the date of conviction, the penalty imposed, the costs, if any, awarded against the offender and the name of the court: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(k).

16 Full particulars must be given of returns and other information about the nature, origin, composition, temperature, volume and rate of discharges provided to the Agency in pursuance of conditions of discharge consents: Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(l).

17 If under the Water Resources Act 1991 s 161A: see PARA 324. Full particulars of such notices must be entered: see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(n) (reg 15(n)-(p) added by SI 1999/1006).

18 If under the Water Resources Act 1991 s 161C: see PARA 327. Full particulars must be entered of notices of appeal under s 161C, documents provided to the Secretary of State or the Welsh Ministers in connection with such appeals, written notifications of the determinations of such appeals and any report accompanying any such written notification: see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(o) (as added: see note 17).

19 If offences under the Water Resources Act 1991 s 161D: see PARA 328. Full particulars must be entered of any conviction of any person for any offence under s 161D, including the name of the offender, the date of conviction, the penalty imposed, the costs, if any, awarded against the offender and the name of the court: see the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(p) (as added: see note 17).

20 Water Resources Act 1991 s 190(1) (s 190 amended by the Environment Act 1995 Sch 22 para 128; the Water Resources Act 1991 s 190(1) further amended by the Environment Act 1995 Sch 22 para 169(1)-(4)). The other prescribed information is full particulars of (1) prohibition notices served under the Water Resources Act 1991 s 86(1) (see PARA 292); and (2) information which was entered on the registers under the Control of Pollution (Registers) Regulations 1989, SI 1989/1160 (revoked): Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(f), (m). See also the Groundwater (England and Wales) Regulations 2009, SI 2009/2902, reg 21; and PARA 335.

21 If under the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 2(2) (see PARA 301), reg 7, Sch 1 para 1(1) (see PARA 304) or reg 14(2), Sch 2 para 1(2) (see PARA 305): reg 16(1)(a).

22 If served under the Water Resources Act 1991 s 90B: see PARA 310.

23 Ie under the Water Resources Act 1991 s 161A: see PARA 324.

24 Ie if they relate to any matters mentioned in the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(o): see notes 17-18.

25 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 16(1)(a)-(c) (amended by SI 1999/1006).

26 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 16(2).

27 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 16(3).

28 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 16(4).

29 For these purposes, 'monitoring information' means information entered on the register by virtue of the Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 15(d), (e) or (l) (see notes 8-9, 16): reg 17(2).

30 Control of Pollution (Applications, Appeals and Registers) Regulations 1996, SI 1996/2971, reg 17(1).

31 Ie by virtue of the Water Resources Act 1991 s 191B: see **WATER AND WATERWAYS** vol 100 (2009) PARA 270.

32 Water Resources Act 1991 s 190(1A) (added by the Environment Act 1995 Sch 22 para 169(1), (4)).

33 Water Resources Act 1991 s 190(2)(a), (b) (as amended: see note 20). For these purposes, places may be prescribed by the Secretary of State or the Welsh Ministers at which any such registers or facilities are to be so available or afforded to the public: s 190(2) (amended by the Environment Act 1995 Sch 22 para 169(1), (5)).

34 Ie by virtue of the Water Resources Act 1991 s 191A or s 191B: see **WATER AND WATERWAYS** vol 100 (2009) PARAS 269, 270.

35 Water Resources Act 1991 s 190(4) (added by the Environment Act 1995 Sch 22 para 169(1), (6)).

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344. Public access to environmental information; in general.

Under the European Directive on Public Access to Environmental Information¹, environmental information is to be made available and disseminated to the public. That Directive and the relevant domestic regulations are discussed elsewhere in this work².

1 The European Parliament and EC Council Directive 2003/4 (OJ L41, 14.02.2003, p 26): see PARA 55. See also **WATER AND WATERWAYS** vol 101 (2009) PARA 674. As to the national freedom of information regime see the Freedom of Information Act 2000; and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583 et seq.

2 See **WATER AND WATERWAYS** vol 101 (2009) PARAS 674, 680.

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345. Information and assistance required in connection with the control of pollution.

It is the duty of the Environment Agency¹, if and so far as it is requested to do so by either the Secretary of State or the Welsh Ministers², to give him or them all such advice and assistance as appears to the Agency to be appropriate for facilitating the carrying out by him or them of his or their functions under the water pollution provisions³ of the Water Resources Act 1991⁴. The Secretary of State or the Welsh Ministers, or the Agency, may serve on any person a notice⁵ requiring that person to furnish him or them, within a period or at times specified in the notice and in a form and manner so specified, with such information⁶ as is reasonably required for the purpose of carrying out any of his or their functions under those water pollution provisions⁷. A person who fails without reasonable excuse to comply with the requirements of such a notice is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or to both⁸.

¹ As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

² The statutory wording is 'either of the ministers': but see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794; and the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

³ As to the meaning of 'water pollution provisions' see PARA 305 note 2. For these purposes, the following obligation is treated as functions of the Secretary of State or the Welsh Ministers under those provisions, ie the obligation under EC Council Directive 91/271 (OJ L135, 30.05.91, p 40) art 16 to publish every two years a situation report on the disposal of urban waste water and sludge in England and Wales; and the obligation under art 17 to establish, update and provide the European Commission with information on a programme for the implementation of that Directive (Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 13). The Water Resources Act 1991 s 202 has effect as if functions under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003, SI 2003/3242 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 198 et seq) were functions under those water pollution provisions: see reg 19(2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 208. See also the Nitrate Pollution Prevention Regulations 2008, SI 2008/2349; the Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143; and PARA 318.

⁴ Water Resources Act 1991 s 202(1) (s 202(1), (2) amended by the Environment Act 1995 Sch 22 para 128).

⁵ As to the service of notices see **WATER AND WATERWAYS** vol 100 (2009) PARA 22.

⁶ As to the meaning of 'information' see **WATER AND WATERWAYS** vol 100 (2009) PARA 117 note 13.

⁷ Water Resources Act 1991 s 202(2) (as amended: see note 4). Section 202(2) has effect as if it conferred power (1) on the Agency to require the furnishing of information reasonably required by the Agency for the purpose of giving effect to EC Council Directive 75/440 (OJ L194, 25.07.75, p 26) and EC Council Directive 79/869 (OJ L71, 29.10.79, p 44) (both Directives repealed from December 2007 by European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) (see PARA 23)) (Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996, SI 1996/3001, reg 7(3)); (2) on the Secretary of State or the Welsh Ministers and the Agency to require the furnishing of information reasonably required for the purposes of giving effect to European Parliament and EC Council Directive 2006/44 (OJ L264, 25.9.2006, p 20) (Surface Waters (Fishlife) (Classification) Regulations 1997, SI 1997/1331, reg 6(3) (amended by SI 2009/1264)); (3) on the Secretary of State or the Welsh Ministers and the Agency to require the furnishing of information reasonably required for the purposes of giving effect to European Parliament and EC Council Directive 2006/113 (OJ L376

27.12.2006 p 14) (Surface Waters (Shellfish) (Classification) Regulations 1997, SI 1997/1332, reg 6(3) (amended by SI 2009/1266)). The Secretary of State or the Welsh Ministers have power to make provision by regulations for restricting the information which may be required under the Water Resources Act 1991 s 202(2) and for determining the form in which it is to be so required: s 202(3). At the date at which this title states the law, no such regulations had been made. As to the making of regulations generally see **WATER AND WATERWAYS** vol 100 (2009) PARA 21. See also the Bathing Water Regulations 2008, SI 2008/1097, reg 16(5) (in force as from 24 March 2012) which provides that the Water Resources Act 1991 s 202(2) has effect as if it conferred power on the Secretary of State, the Welsh Ministers and the Agency to require the furnishing of information reasonably required for the purposes of giving effect to European Parliament and EC Council Directive 2006/7 (OJ L64 4.3.2006 p 37); and see also PARA 330 note 20.

8 Water Resources Act 1991 s 202(4) (amended by the Environment Act 1995 Sch 22 para 172(1)). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140; as to providing false information see **WATER AND WATERWAYS** vol 100 (2009) PARA 184; and as to offences by bodies corporate see **WATER AND WATERWAYS** vol 100 (2009) PARA 185.

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346. Exchange of information with respect to pollution incidents etc.

It is the duty of the Environment Agency¹ to provide a water undertaker² with all such information about the quality of any controlled waters³, or about any incident in which any poisonous, noxious or polluting matter or any waste matter has entered any controlled waters or any other waters, as is in its possession and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions⁴. It is also the duty of the Agency to provide a licensed water⁵ supplier with all such information to which these provisions apply as is in the possession of the Agency and is reasonably requested by the supplier for purposes connected with the carrying on of activities under its licence⁶.

Correspondingly, it is the duty of every water undertaker to provide the Agency with all such information described above as is in the possession of the undertaker and is reasonably requested by the Agency for purposes connected with the carrying out of any of its functions⁷; and it is also the duty of every licensed water supplier to provide the Agency with all such information to which these provisions apply as is in the possession of the supplier and is reasonably requested by the Agency for purposes connected with the carrying out of any of its functions⁸.

Information so provided must be provided in such form and manner and at such time as the water undertaker, licensed water supplier or Agency may reasonably require⁹, and must be provided free of charge¹⁰.

The duties of a water undertaker and of a licensed water supplier under these provisions are enforceable¹¹ by the Secretary of State or, in relation to Wales, by the Welsh Ministers¹².

1 As to the Environment Agency see PARA 68 et seq; and as to its pollution control functions generally see PARA 75.

2 As to the meaning of 'water undertaker' see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 note 4.

3 As to the meaning of 'controlled waters' see PARA 289 (definition applied by the Water Resources Act 1991 s 203(7)).

4 Water Resources Act 1991 s 203(1), (6) (s 203(1), (2), (4) amended by the Environment Act 1995 Sch 22 para 128; and the Water Resources Act 1991 s 203(6) amended by SI 2007/3538).

5 Any reference for these purposes to a licensed water supplier is a reference to a company holding a licence under the Water Industry Act 1991 Pt II Ch 1A (ss 17A-17R) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 152 et seq): Water Resources Act 1991 s 203(8) (s 203(1A), (2A), (8) added, s 203(3) substituted, and s 203(4), (5) amended, by the Water Act 2003 Sch 8 para 53(1), (2)).

6 Water Resources Act 1991 s 203(1A) (as added: see note 5).

7 Water Resources Act 1991 s 203(2) (as amended: see note 4).

8 Water Resources Act 1991 s 203(2A) (as added: see note 5).

9 See the Water Resources Act 1991 s 203(3) (as substituted: see note 5).

10 See the Water Resources Act 1991 s 203(4) (as amended: see notes 4, 5).

11 ie under the Water Industry Act 1991 s 18: see **WATER AND WATERWAYS** vol 100 (2009) PARA 163.

12 See the Water Resources Act 1991 s 203(5) (as amended: see note 5). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

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8. SHIPPING AND POLLUTION

(1) IN GENERAL

347. Scope of legislation.

The statutory controls over the pollution of navigable waters by oil, dangerous, hazardous and noxious substances, deposits in the sea, garbage, sludge and dark smoke are now contained in the Prevention of Oil Pollution Act 1971¹, the Food and Environment Protection Act 1985², the Clean Air Act 1993³ and the Merchant Shipping Act 1995⁴ and subordinate legislation made thereunder.

1 See PARA 348 et seq.

2 See PARA 525 et seq.

3 See PARA 575.

4 See PARA 360 et seq; and see also PARA 4 note 1. As to European Union climate change legislation generally see the EUR-Lex website which was, at the date at which this volume states the law, www.eur-lex.europa.eu.

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(2)

(i) Discharge of Oil

348. Discharge of oil into United Kingdom waters.

If any oil¹ or mixture containing oil² is discharged³ into any part of the sea⁴ within the seaward limits of the territorial waters of the United Kingdom⁵ or into any other waters, including inland waters, which are within those limits and navigable by sea-going ships, the following are guilty of an offence:

- 518 (1) if the discharge is from a place on land⁶, the occupier of that place, unless he proves that the discharge was caused as mentioned in head (2) below;
- 519 (2) if the discharge is from a place on land and is caused by the act of a person who is in that place without the permission, express or implied, of the occupier⁷, that person;
- 520 (3) if the discharge takes place otherwise than as mentioned in heads (1) and (2) above and is the result of any operations for the exploration of the sea bed and subsoil or the exploitation of their natural resources, the person carrying on the operations⁸.

A person guilty of an offence under the above provisions is liable to a fine⁹.

1 For these purposes, 'oil' means oil of any description and includes spirit produced from oil of any description, and also includes coal tar: Prevention of Oil Pollution Act 1971 s 29(1).

2 For these purposes, any reference in any provision of the Prevention of Oil Pollution Act 1971 to a mixture containing oil is to be construed as a reference to any mixture of oil, or, as the case may be, of oil of a description referred to in that provision, with water or with any other substance: s 29(2). Section 29(2) is repealed by the Merchant Shipping (Registration, etc) Act 1993 s 8(4), Sch 5 Pt II, except in so far as it relates to the Prevention of Oil Pollution Act 1971 s 2(1) and s 3 (see PARA 349).

3 For these purposes, any reference, other than in the Prevention of Oil Pollution Act 1971 s 11 (see PARA 351), to the discharge of oil or a mixture containing oil, or to its being discharged from a vessel, place or thing, except where the reference is to its being discharged for a specified purpose, includes a reference to the escape of the oil or mixture, or, as the case may be, to its escaping, from that vessel, place or thing: s 29(3).

4 For these purposes, 'sea' includes any estuary or arm of the sea: Prevention of Oil Pollution Act 1971 s 29(1).

5 As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

6 For these purposes, 'place on land' includes anything resting on the bed or shore of the sea, or of any other waters to which the Prevention of Pollution Act 1971 s 2 applies, and also includes anything afloat, other than a vessel, if it is anchored or attached to the bed or shore of the sea or of any other such waters: ss 2(3), 29(1).

7 For these purposes, 'occupier', in relation to a place on land, if it has no occupier, means the owner of it, and, in relation to a railway wagon or road vehicle, means the person in charge of the wagon or vehicle and not the occupier of the land on which the wagon or vehicle stands: Prevention of Oil Pollution Act 1971 s 2(3).

8 Prevention of Oil Pollution Act 1971 s 2(1)(c)-(e), (2). The provisions of s 2(1)(c)-(e) and s 3(1) (see PARA 349) do not apply to any discharge which is made under an authorisation granted under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) (see PARA 159 et seq) or a permit granted under regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARA 186): Prevention of Oil Pollution Act 1971 s 11A(1) (added by the Environment Act 1995 Sch 22 para 15(1), (2); and amended by the Pollution Prevention and Control Act 1999 Sch 2 para 1). As from a day to be appointed, the reference to 'an authorisation granted under the Environmental Protection Act 1990 Pt I (ss 1-28)' is removed: Prevention of Oil Pollution Act 1971 s 11A(1) (prospectively amended by the Pollution Prevention and Control Act 1999 Sch 3). At the date at which this volume states the law no such day had been appointed.

See further, in relation to the disapplication of the Prevention of Oil Pollution Act 1971 s 2 to discharges of oil which are regulated by a permit granted under the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 18(1).

As to the application of the Prevention of Oil Pollution Act 1971 to Northern Ireland see s 30 (amended by the Northern Ireland Constitution Act 1973 Sch 6; the Environmental Protection Act 1990 Sch 14 para 7; and the Merchant Shipping Act 1995 Sch 12).

9 Prevention of Oil Pollution Act 1971 s 2(4). Such a person is liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding £50,000: see s 2(4). As to the defences available see PARAS 350, 351; and as to prosecutions see PARA 355.

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349. Discharge of certain oils from pipe-lines or as the result of exploration etc in designated areas.

If:

- 521 (1) any crude oil¹, fuel oil or lubricating oil;
- 522 (2) heavy diesel oil²; or
- 523 (3) any oil produced directly or indirectly from crude oil; or
- 524 (4) any mixture containing such oil³,

is discharged⁴ into any part of the sea⁵ from a pipe-line, or, otherwise than from a ship, as the result of any operation for the exploration of the sea bed and subsoil or the exploitation of their natural resources in a designated area⁶, the owner of the pipe-line or, as the case may be, the person carrying on the operations is guilty of an offence unless the discharge was from a place in his occupation and he proves that it was due to the act of a person who was there without his permission, express or implied⁷.

A person guilty of such an offence is liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding £50,000⁸. Proceedings for such an offence may, in England and Wales, be brought only with the consent of the Director of Public Prosecutions⁹; and any such proceedings may be taken and the offence may, for all incidental purposes, be treated as having been committed in any place in the United Kingdom¹⁰.

1 As to the meaning of 'oil' see PARA 348 note 1.

2 As defined by regulations made by the Secretary of State. As to the meaning of 'heavy diesel oil' see the Oil in Navigable Waters (Heavy Diesel Oil) Regulations 1967, SI 1967/710, reg 1.

3 As to the meaning of 'mixture containing oil' see PARA 348 note 2.

4 As to the meaning of 'discharge' see PARA 348 note 3.

5 As to the meaning of 'sea' see PARA 348 note 4.

6 For these purposes, 'designated area' means an area for the time being designated by an Order made under the Continental Shelf Act 1964 s 1 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636); Prevention of Oil Pollution Act 1971 s 3(2).

7 Prevention of Oil Pollution Act 1971 ss 1(2), 3(1); Prevention of Oil Pollution Act 1971 (Application of section 1) Regulations 1984, SI 1984/1684, reg 2. The provisions of the Prevention of Oil Pollution Act 1971 s 2(1)(c)-(e) (see PARA 348) and s 3(1) do not apply to any discharge which is made under an authorisation granted under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) (see PARA 159 et seq) or a permit granted under regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARA 186); Prevention of Oil Pollution Act 1971 s 11A(1) (added by the Environment Act 1995 Sch 22 para 15(1), (2); and amended by the Pollution Prevention and Control Act 1999 Sch 2 para 1). As from a day to be appointed, the reference to 'an authorisation granted under the Environmental Protection Act 1990 Pt I (ss 1-28)' is removed: Prevention of Oil Pollution Act 1971 s 11A(1) (prospectively amended by the Pollution Prevention and Control Act 1999 Sch 3). At the date at which this volume states the law no such day had been appointed.

See further, in relation to the disapplication of the Prevention of Oil Pollution Act 1971 ss 1, 3 to discharges of oil which are regulated by a permit granted under the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 18(1).

8 Prevention of Oil Pollution Act 1971 s 3(3). Section 19(1)-(6) (see PARA 355) does not apply in relation to an offence under s 3: s 19(7). As to the defences available see PARAS 350, 351. Where a body corporate is guilty of an offence under s 3, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished accordingly: s 19(8). For these purposes, 'director', in relation to a body corporate established for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate: s 19(8).

9 Prevention of Oil Pollution Act 1971 s 19(7)(a).

10 Prevention of Oil Pollution Act 1971 s 19(7).

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350. Defence of owner or master charged with offences.

Where a person is charged as the owner or master of a vessel with an offence in respect of the discharge of oil or a mixture containing oil into United Kingdom waters¹, it is a defence to prove that the oil or mixture was discharged for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo, or of saving life, unless the court is satisfied that the discharge of the oil or mixture was not necessary for that purpose or was not a reasonable step to take in the circumstances².

Where a person is so charged with an offence, it is also a defence to prove:

- 525 (1) that the oil or mixture escaped in consequence of damage to the vessel, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or, if it could not be prevented, for stopping or reducing, the escape of the oil or mixture; or
- 526 (2) that the oil or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it³.

¹ ie an offence under the Prevention of Oil Pollution Act 1971 s 2: see PARA 348. As to the meaning of 'oil' see PARA 348 note 1; and as to the meaning of 'mixture containing oil' see PARA 348 note 2.

² Prevention of Oil Pollution Act 1971 s 5(1). Section 5 is repealed by the Merchant Shipping Act 1995 Sch 12, except in so far as it relates to the Prevention of Oil Pollution Act 1971 s 2(1), (3) (see PARA 348).

³ Prevention of Oil Pollution Act 1971 s 5(2). See also note 2.

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351. Defences of other persons charged with offences.

Where a person is charged with an offence, in respect of the discharge of oil or mixture containing oil, into United Kingdom waters¹, or from a pipe-line or as a result of exploration in designated areas²:

- 527 (1) as the occupier³ of a place on land⁴; or
- 528 (2) as a person carrying on operations for the exploration of the sea bed and subsoil or the exploitation of their natural resources⁵; or
- 529 (3) as the owner of a pipe-line⁶,

it is a defence to prove that neither the escape nor any delay in discovering it was due to any want of reasonable care and that, as soon as practicable after it was discovered, all reasonable steps were taken for stopping or reducing it⁷.

Where a person is charged with an offence⁸ in respect of the discharge of a mixture containing oil from a place on land, it is also a defence to prove:

- 530 (a) that the oil was contained in an effluent produced by operations for the refining of oil;
- 531 (b) that it was not reasonably practicable to dispose of the effluent except by such discharge; and
- 532 (c) that all reasonably practicable steps had been taken for eliminating oil from the effluent⁹;

but, if it is proved that, at the time to which the charge relates, the surface of the waters into which the mixture was discharged from the place on land, or land adjacent to those waters, was fouled by oil, that defence¹⁰ does not apply unless the court is satisfied that the fouling was not caused, or contributed to, by oil contained in any effluent discharged at or before that time from that place¹¹.

1 Is an offence under the Prevention of Oil Pollution Act 1971 s 2: see PARA 348. As to the meaning of 'oil' see PARA 348 note 1; and as to the meaning of 'mixture containing oil' see PARA 348 note 2.

2 Is an offence under the Prevention of Pollution Act 1971 s 3: see PARA 349.

3 As to the meaning of 'occupier' see PARA 348 note 7.

4 Prevention of Oil Pollution Act 1971 s 6(1)(a). As to the meaning of 'place on land' see PARA 348 note 6. Section 6(1)(a) is repealed by the Merchant Shipping Act 1995 Sch 12, except in so far as it relates to the Prevention of Pollution Act 1971 s 2(1), (3) (see PARA 348).

See further, in relation to the disapplication of s 6 to discharges of oil which are regulated by a permit granted under the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 18(1).

5 Prevention of Pollution Act 1971 s 6(1)(b).

6 Prevention of Pollution Act 1971 s 6(1)(c).

- 7 Prevention of Pollution Act 1971 s 6(1).
- 8 Is an offence under the Prevention of Pollution Act 1971 s 2.
- 9 Prevention of Pollution Act 1971 s 6(2).
- 10 Is the defence afforded by the Prevention of Pollution Act 1971 s 6(2).
- 11 Prevention of Pollution Act 1971 s 6(3).

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352. Protection of acts done in exercise of certain powers of harbour authorities etc.

Where any oil¹, or mixture containing oil², is discharged in consequence of:

- 533 (1) the exercise of any of the statutory powers of harbour, conservancy and lighthouse authorities³ to remove wrecks; or
- 534 (2) the exercise, for the purpose of preventing an obstruction or danger to navigation, of any power to dispose of sunk, stranded or abandoned vessels which is exercisable by a harbour authority under any local enactment⁴,

and the authority exercising the power, or a person employed by or acting on behalf of that authority, would otherwise be guilty of an offence in respect of that discharge⁵, the authority or person must not be convicted of that offence unless it is shown that it or he failed to take such steps, if any, as were reasonable in the circumstances for preventing, stopping or reducing the discharge⁶.

1 As to the meaning of 'oil' see PARA 348 note 1.

2 As to the meaning of 'mixture containing oil' see PARA 348 note 2.

3 I.e. the power conferred by the Merchant Shipping Act 1894 ss 530-532 (repealed); see now the Merchant Shipping Act 1995 ss 252, 253 and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARAS 1008, 1009.

4 For these purposes, 'local enactment' means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure: Prevention of Oil Pollution Act 1971 s 29(1).

5 I.e. an offence under the Prevention of Oil Pollution Act 1971 s 2: see PARA 348.

6 Prevention of Oil Pollution Act 1971 s 7(1). Section 7(1) also applies to the exercise of any power conferred by the Dockyard Ports Regulation Act 1865 s 13 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 693); see the Prevention of Oil Pollution Act 1971 s 7(2). Section 7 is repealed by the Merchant Shipping Act 1995 Sch 12, except in so far as it relates to the Prevention of Oil Pollution Act 1971 s 2(1), (3) (see PARA 348).

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353. Duty to report discharge of oil into waters of harbours.

If any oil¹ or mixture containing oil² is found to be escaping or to have escaped into the waters of a harbour in the United Kingdom from a place on land³, the occupier⁴ of the place on land must forthwith report the occurrence to the harbour master⁵, or, if the harbour has no harbour master, to the harbour authority⁶.

If a person fails to make such a report, he is liable to a fine⁷.

1 As to the meaning of 'oil' see PARA 348 note 1.

2 As to the meaning of 'mixture containing oil' see PARA 348 note 2.

3 As to the meaning of 'place on land' see PARA 348 note 6.

4 As to the meaning of 'occupier' see PARA 348 note 7.

5 For these purposes, 'harbour master' includes a dock master or pier master, and any person specially appointed by a harbour authority for the purpose of enforcing the provisions of the Prevention of Oil Pollution Act 1971 in relation to the harbour: s 29(1).

6 Prevention of Oil Pollution Act 1971 s 11(1) (amended by the Merchant Shipping Act 1995 Sch 12). The provisions of the Prevention of Oil Pollution Act 1971 s 11(1) do not apply to any escape which is authorised by an authorisation granted under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) (see PARA 159 et seq) or a permit granted under regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARA 186): Prevention of Oil Pollution Act 1971 s 11A(1) (added by the Environment Act 1995 Sch 22 para 15(1), (2); and amended by the Pollution Prevention and Control Act 1999 Sch 2 para 1). As from a day to be appointed, the reference to 'an authorisation granted under the Environmental Protection Act 1990 Pt I (ss 1-28)' is removed: Prevention of Oil Pollution Act 1971 s 11A(1) (prospectively amended by the Pollution Prevention and Control Act 1999 Sch 3). At the date at which this volume states the law no such day had been appointed.

7 Prevention of Oil Pollution Act 1971 s 11(3) (amended by the Merchant Shipping Act 1979 Sch 6 Pt IV; and the Criminal Justice Act 1982 s 46(1), (4)). Such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see the Prevention of Oil Pollution Act 1971 s 11(3) (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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(ii) Enforcement

354. Powers of inspection.

The Secretary of State¹ may appoint any person as an inspector to report to him:

- 535 (1) whether the prohibitions, restrictions and obligations imposed by virtue of the Prevention of Oil Pollution Act 1971, including prohibitions so imposed by the creation of offences under any provision of that Act², have been complied with;
- 536 (2) what measures, other than measures made obligatory by regulations³, have been taken to prevent the escape of oil⁴ and mixtures containing oil⁵;
- 537 (3) whether the oil reception facilities provided in harbours are adequate;

and any such inspector may be so appointed to report either in a particular case or in a class of cases specified in his appointment⁶.

Without prejudice to any powers exercisable by virtue of the above provisions, in the case of a vessel which is for the time being in a harbour in the United Kingdom⁷ the harbour master⁸, and any other person appointed by the Secretary of State under this provision, either generally or in relation to a particular vessel, has power:

- 538 (a) to go on board and inspect the vessel or any part of it, or any of the machinery, boats, equipment or articles on board the vessel, for the purpose of ascertaining the circumstances relating to an alleged discharge⁹ of oil or a mixture containing oil from the vessel into the waters of the harbour;
- 539 (b) to require the production of any oil record book required to be carried or records required to be kept¹⁰; and
- 540 (c) to copy any entry in any such book or record and require the master to certify the copy as a true copy of the entry¹¹.

A person exercising the powers conferred by heads (a) to (c) above must not unnecessarily detain or delay the vessel from proceeding on any voyage¹².

If any person fails to comply with any requirement duly made in pursuance of head (b) or (c) above, he is liable to a fine¹³; and, if any person intentionally obstructs a person acting in the exercise of any of the above powers, and the offence is not otherwise punishable¹⁴, he is also liable to a fine¹⁵.

1 As to the Secretary of State see PARA 58.

2 Ie including prohibitions so imposed by the creation of offences under any provision of the Prevention of Oil Pollution Act 1971 other than s 3 (see PARA 349).

3 Ie regulations made under the Prevention of Oil Pollution Act 1971 s 4 (repealed).

4 As to the meaning of 'oil' see PARA 348 note 1.

5 As to the meaning of 'mixture containing oil' see PARA 348 note 2.

6 Prevention of Oil Pollution Act 1971 s 18(1). The Merchant Shipping Act 1979 ss 27, 28(1), (3), (4) (repealed: see now the Merchant Shipping Act 1995 ss 259, 260; and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49) (powers of inspectors) apply, with appropriate modifications, to persons appointed or taken to be appointed under the Prevention of Oil Pollution Act 1971 s 18(1): see s 18(3) (amended by the Merchant Shipping Act 1979 s 28(7)(c)). Every surveyor of ships is to be taken to be a person appointed generally under the Prevention of Oil Pollution Act 1971 s 18(1) to report to the Secretary of State in every kind of case falling within s 18(1): s 18(2). Any power of an inspector under the Merchant Shipping Act 1979 s 27 (repealed: see above) (as so applied) to require the production of any oil record book required to be carried or records required to be kept in pursuance of regulations made under the Prevention of Oil Pollution Act 1971 s 17 (repealed) includes power to copy any entry in it and require the master to certify the copy as a true copy of the entry: s 18(5) (amended by the Merchant Shipping Act 1979 s 28(7)(c)(ii)).

The Prevention of Oil Pollution Act 1971 s 18 is repealed by the Merchant Shipping (Registration, etc) Act 1993 s 8(4), Sch 5 Pt II, except in so far as it relates to the Prevention of Oil Pollution Act 1971 s 2(1) (see PARA 348) and s 3 (see PARA 349).

As to the assimilation of powers of inspection see the Merchant Shipping (Registration, etc) Act 1993 s 8(3), Sch 4 para 17 (repealed).

7 As to the meaning of 'United Kingdom' see PARA 1 note 2.

8 As to the meaning of 'harbour master' see PARA 353 note 5.

9 As to the meaning of 'discharge' see PARA 348 note 3.

10 Ie in pursuance of regulations made under the Prevention of Oil Pollution Act 1971 s 17 (repealed).

11 Prevention of Oil Pollution Act 1971 s 18(6). See also note 6.

12 Prevention of Oil Pollution Act 1971 s 18(7). See also note 6.

13 Ie such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see the Prevention of Oil Pollution Act 1971 s 18(8); and note 15. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

14 Ie by virtue of the Merchant Shipping Act 1979 s 28(1) (repealed).

15 Prevention of Oil Pollution Act 1971 s 18(8) (amended by the Merchant Shipping Act 1979 s 28(7)(c)(iii), Sch 6 Pts II, III; the Criminal Justice Act 1982 s 46(1), (4); and the Merchant Shipping (Registration, etc) Act 1993 Sch 4 para 74(a)). Such a person is liable on summary conviction to a fine not exceeding level 4 on the standard scale: see the Prevention of Oil Pollution Act 1971 s 18(8) (as so amended). See also notes 6, 13.

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355. Prosecutions.

Proceedings for an offence under the Prevention of Oil Pollution Act 1971¹ may, in England or Wales, be brought only:

- 541 (1) by or with the consent of the Attorney General; or
- 542 (2) if the offence is:

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- 1. (a) any offence² which is alleged to have been committed by the discharge of oil³, or a mixture containing oil⁴, into the waters of a harbour in the United Kingdom;
- 2. (b) any offence⁵ in respect of a failure to comply with a requirement of or obstruction of, a harbour master⁶,

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- 543 by the harbour authority; or

- 544 (3) unless the offence is one mentioned in head (2)(a) or (2)(b) above, by the Secretary of State or a person authorised by any general or special direction of the Secretary of State⁷.

Where, immediately before the date on which the time for bringing summary proceedings for an offence under the 1971 Act would otherwise expire, the person to be charged is outside the United Kingdom, the time for bringing the proceedings must be extended until the end of the period of two months beginning with the date on which he next enters the United Kingdom⁸.

Proceedings for any offence under the 1971 Act may, without prejudice to any jurisdiction otherwise exercisable, be taken against a person at any place at which he is for the time being⁹.

The above provisions do not apply in relation to an offence under the provision¹⁰ relating to the discharge of certain oils from pipe-lines or discharge as the result of exploration in designated areas¹¹.

1 Subject to the Interpretation Act 1978 s 18 (offence under two or more laws), nothing in the Prevention of Oil Pollution Act 1971 affects any restriction imposed by or under any other enactment, whether contained in a public general Act or in a local or private Act, or derogates from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under the 1971 Act: s 32; Interpretation Act 1978 s 17(2)(b).

2 Ie any offence under the Prevention of Oil Pollution Act 1971 s 2: see PARA 348.

3 As to the meaning of 'oil' see PARA 348 note 1.

4 As to the meaning of 'mixture containing oil' see PARA 348 note 2.

5 Ie any offence under the Prevention of Oil Pollution Act 1971 s 18: see PARA 354.

6 As to the meaning of 'harbour master' see PARA 353 note 5.

7 Prevention of Oil Pollution Act 1971 s 19(1), (2)(a), (d). If a local fisheries committee constituted by an order made, or having effect as if made, under the Sea Fisheries Regulation Act 1966 s 1 (see **AGRICULTURE AND**

FISHERIES vol 1(2) (2007 Reissue) PARA 964) or any of its officers is authorised in that behalf under the Prevention of Oil Pollution Act 1971 s 19(1), the committee may institute proceedings for any offence under the Prevention of Oil Pollution Act 1971 committed within the district of the committee: s 19(6). See also **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 964. Section s 19(6) is repealed by the Marine and Coastal Access Act 2009 Sch 22 Pt 4 as from a day to be appointed under s 324. Also as from a day to be appointed, a new provision is added providing that if certain authorities under s 149 or s 165 are authorised under the Prevention of Oil Pollution Act 1971 s 19(1) proceedings may be instituted for an offence under the 1971 Act committed within the relevant district: s 19(5A) (prospectively added by the Marine and Coastal Access Act 2009 Sch 14 para 8). At the date at which this volume states the law no such day or days had been appointed although the addition of the Prevention of Oil Pollution Act 1971 s 19(5A) was in force from 12 November 2009 but only so far as it confers power to make regulations or an order.

The Prevention of Oil Pollution Act 1971 s 19(1), (2) applies, with modifications, to any part of a dockyard port within the meaning of the Dockyard Ports Regulation Act 1865 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 613): see the Prevention of Oil Pollution Act 1971 s 19(3).

8 Prevention of Oil Pollution Act 1971 s 19(4). The Merchant Shipping Act 1894 s 683 (repealed: see now the Merchant Shipping Act 1995 s 274(1); and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1100) now applies in relation to offences under the Prevention of Oil Pollution Act 1971 instead of s 19(4): see the Merchant Shipping (Registration, etc) Act 1993 s 8(3), Sch 4 para 59 (repealed).

9 Prevention of Oil Pollution Act 1971 s 19(5). The Merchant Shipping Act 1894 s 684 (repealed: see now the Merchant Shipping Act 1995 s 279; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1103) now applies in relation to offences under the Prevention of Oil Pollution Act 1971 instead of s 19(5): see the Merchant Shipping (Registration, etc) Act 1993 s 8(3), Sch 4 para 60 (repealed).

10 Is an offence under the Prevention of Oil Pollution Act 1971 s 3: see PARA 349.

11 See the Prevention of Oil Pollution Act 1971 s 19(7) and PARA 349.

UPDATE

355 Prosecutions

NOTE 7--Repeal of Prevention of Oil Pollution Act 1971 s 19(6) in force in relation to Wales on 1 April 2010: SI 2010/630.

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(iii) Supplementary Provisions

356. Secretary of State's power to grant exemptions.

The Secretary of State¹ may exempt any discharge of, or of a mixture containing, oil² from any of the provisions of the Prevention of Oil Pollution Act 1971 or of any regulations made under it, either absolutely or subject to such conditions as he thinks fit³.

1 As to the Secretary of State see PARA 58.

2 As to the meaning of 'oil' see PARA 348 note 1; and as to the meaning of 'mixture containing oil' see PARA 348 note 2.

3 Prevention of Oil Pollution Act 1971 s 23 (substituted by the Petroleum Act 1998 Sch 4 para 4).

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357. Annual report.

As soon as possible after the end of each calendar year, the Secretary of State¹ must make a report on the exercise and performance of his functions under the Prevention of Oil Pollution Act 1971 during that year, which must include such observations as he may think fit to make on the operation during that year of that Act and of any Convention accepted by Her Majesty's government in the United Kingdom², in so far as it relates to the prevention of pollution of the sea³ by oil⁴; and the Secretary of State must lay a copy of every such report before each House of Parliament⁵.

- 1 As to the Secretary of State see PARA 58.
- 2 As to the meaning of 'United Kingdom' see PARA 1 note 2.
- 3 As to the meaning of 'sea' see PARA 348 note 4.
- 4 As to the meaning of 'oil' see PARA 348 note 1.
- 5 Prevention of Oil Pollution Act 1971 s 26.

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358. Orders in Council, regulations and orders.

Any power to make regulations or an order under the Prevention of Oil Pollution Act 1971 is exercisable by statutory instrument¹.

Any Order in Council, or other order, made under any provision of that Act may be varied or revoked by a subsequent Order in Council or order made under it².

1 Prevention of Oil Pollution Act 1971 s 27(1). Any statutory instrument made by virtue of the Prevention of Oil Pollution Act 1971, other than an Order in Council under s 25 (repealed), is subject to annulment in pursuance of a resolution of either House of Parliament: s 27(2).

2 Prevention of Oil Pollution Act 1971 s 27(3).

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359. Financial provisions.

There must be defrayed out of money provided by Parliament any administrative expenses of the Secretary of State¹ under the Prevention of Oil Pollution Act 1971².

Any fees received by the Secretary of State under that Act must be paid into the Consolidated Fund³.

1 As to the Secretary of State see PARA 58.

2 Prevention of Oil Pollution Act 1971 s 28(1).

3 Prevention of Oil Pollution Act 1971 s 28(2). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq.

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(3)

(i) In general

360. Prevention of pollution from ships etc.

Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of any of the following which have been ratified by the United Kingdom¹:

- 545 (1) the International Convention for the Prevention of Pollution from Ships² including its protocols, annexes and appendices;
- 546 (2) the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil³;
- 547 (3) the Protocol relating to that Convention⁴;
- 548 (4) the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, including the Final Act of the Conference and the attached resolutions⁵;
- 549 (5) the Protocol to amend the Convention for the Prevention of Pollution from Ships⁶;
- 550 (6) any international agreement not mentioned in heads (1) to (5) above which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships;

and in head (5) above the reference to an agreement includes an agreement which provides for the modification of another agreement, including the modification of an agreement mentioned in heads (1) to (3) above⁷.

The powers conferred by the above provisions to make provision for the purpose of giving effect to an agreement include power to provide for the provision to come into force although the agreement has not come into force⁸.

Such an Order may⁹ in particular include provision:

- 551 (a) for applying for the purpose mentioned in the above provisions¹⁰ any enactment or instrument relating to the pollution of the sea or other waters and also any of certain other specified provisions of the Merchant Shipping Act 1995¹¹;
- 552 (b) with respect to the carrying out of surveys and inspections for that purpose and the issue, duration and recognition of certificates for that purpose;
- 553 (c) for repealing the provisions of any enactment or instrument so far as it appears to Her Majesty that those provisions are not required having regard to any provision made or proposed to be made by virtue of these provisions;
- 554 (d) with respect to the application of the Order to the Crown and the extra-territorial operation of any provision made by or under the Order;
- 555 (e) for the extension of any provisions of the Order, with or without modifications, to any relevant British possession¹²;

- 556 (f) that a contravention¹³ of a provision made by or under the Order be an offence punishable on conviction on indictment by imprisonment for a term not exceeding two years and a fine and on summary conviction by a fine not exceeding the statutory maximum;
- 557 (g) that any such contravention be an offence punishable only on summary conviction by a maximum fine of an amount not exceeding level 5 on the standard scale or such less amount as is prescribed by the Order;
- 558 (h) in connection with offences created by or under the Order, corresponding to any provision made in connection with the statutory provisions relating to the discharge of oil from ships in certain United Kingdom waters¹⁴, subject to such modifications as may be specified by or under the Order, or otherwise;
- 559 (i) for detaining any ship¹⁵ in respect of which such a contravention is suspected to have occurred and, in relation to such a ship, for applying the statutory provisions relating to the detention of ships with such modifications, if any, as are prescribed by the Order;

and nothing in any of heads (a) to (i) above is to be construed as prejudicing the generality of any other of those provisions and in particular neither head (f) nor head (g) above prejudices head (a) above¹⁶.

Such an order made in pursuance of head (4) above may include provision imposing on local authorities responsibilities in relation to the preparation, review and implementation of any plans required by the agreement mentioned in that head¹⁷.

Such an Order may:

- 560 (i) make different provision for different circumstances;
- 561 (ii) make provision in terms of any document which the Secretary of State or any person considers relevant from time to time;
- 562 (iii) provide for exemptions from any provisions of the Order;
- 563 (iv) provide for the delegation of functions exercisable by virtue of the Order;
- 564 (v) include such incidental, supplemental and transitional provisions as appear to Her Majesty to be expedient for the purposes of the Order;
- 565 (vi) authorise the making of regulations and other instruments for any of these purposes, except the purposes of heads (a) and (c) above; and
- 566 (vii) provide that any enactment or instrument applied by the Order have effect as so applied subject to such modifications as may be specified in the Order¹⁸.

Where such an Order in Council authorises the making of regulations for the purpose of giving effect to an agreement mentioned in heads (1) to (5) above or falling within head (6) above, the Order also authorises the making of regulations for the purpose of giving effect to an agreement which provides for the modification of such an agreement¹⁹.

A draft of an Order in Council proposed to be so made must not be submitted to Her Majesty in Council unless:

- 567 (A) the draft has been approved by a resolution of each House of Parliament;
- 568 (B) the Order is to contain a statement that it is made only for any of the specified purposes²⁰; or
- 569 (C) the Order extends only to a possession mentioned in head (e) above²¹.

1 As to the meaning of 'United Kingdom' see PARA 1 note 2.

2 le the International Convention for the Prevention of Pollution from Ships 1973 (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748) which constitutes attachment 1 to the final act of the International Conference on Marine Pollution signed in London on 2 November 1973.

3 le the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil which constitutes attachment 2 to the final act of the International Conference on Marine Pollution signed in London on 2 November 1973.

4 le the Protocol (London, 1 June 1978 to 31 May 1979; Misc 27 (1978); Cmnd 7347) which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17 February 1978.

5 le the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 signed in London on 30 November 1990. The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Order 1997, SI 1997/2567, empowers the Secretary of State to make regulations for the purpose of giving effect to the Convention. As to such regulations see the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, SI 1998/1056 (amended by SI 2001/1639; and SI 2007/3224). As to the Secretary of State see PARA 58.

6 le the Protocol to amend the Convention for the Prevention of Pollution from Ships (see PARA 367 note 6), signed in London on 26 September 1997, which added the Convention Annex VI containing regulations for the prevention of air pollution from ships. The Merchant Shipping (Prevention of Air Pollution from Ships) Order 2006, SI 2006/1248, enables regulations to be made to give effect to the Convention Annex VI. As to such regulations see the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924; and PARA 361.

7 Merchant Shipping Act 1995 s 128(1) (amended by the Merchant Shipping (Pollution) Act 2006 s 2). An Order in Council in pursuance of the Merchant Shipping Act 1995 s 128(1)(b) or (e) (see heads (1), (6) in the text) may apply to areas of land or sea or other United Kingdom waters notwithstanding that the agreement in question does not relate to those areas: s 128(7). Section 306(3) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41) does not apply to a statutory instrument containing an Order in Council under s 128: s 306(3). As to the meaning of 'United Kingdom waters' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 48 note 10.

Section 128(1)(e) (see head (6) in the text) applies to drilling rigs and other platforms which are used, navigated or situated wholly or partly in or on water, as it applies in relation to ships: Merchant Shipping (Prevention of Pollution) (Drilling Rigs and Other Platforms) Order 2005, SI 2005/74. Under head (6) in the text, the Merchant Shipping (Control of Pollution) (SOLAS) Order 1998, SI 1998/1500, empowers the Secretary of State to make regulations for the purpose of giving effect to the International Convention for the Safety of Life at Sea 1974, its Protocol, and amendments in force on 1 July 1998.

At the date at which this volume states the law by virtue of the Interpretation Act 1978 s 17(2)(b), the following orders have effect as if made under the Merchant Shipping Act 1995 s 128: the Merchant Shipping (Prevention of Pollution) (Intervention) (Overseas Territories) Order 1982, SI 1982/1666; the Merchant Shipping (Prevention of Oil Pollution) Order 1983, SI 1983/1106 (amended by SI 1984/1153; SI 1985/2002; SI 1988/788; SI 1989/1350; SI 1991/2885; and SI 1993/1580); the Prevention of Pollution (Reception Facilities) Order 1984, SI 1984/862 (revoked) (see now the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003, SI 2003/1809); the Merchant Shipping (Prevention and Control of Pollution) Order 1987, SI 1987/470 (amended by SI 1987/664; SI 1990/2595; SI 1992/2668; SI 1997/2568; and SI 1998/245); and the Merchant Shipping (Prevention and Control of Pollution) Order 1990, SI 1990/2595 (amended by SI 1992/2668).

Other subordinate legislation under the Merchant Shipping Act 1995 s 128 includes: the Merchant Shipping (Oil Pollution Preparedness, Response and Cooperation Convention) Order 1997, SI 1997/2567 (made under the Merchant Shipping Act 1995 s 128(1)(d), (3), (4)) (see note 5); the Merchant Shipping (Control of Pollution) (SOLAS) Order 1998, SI 1998/1500 (made under the Merchant Shipping Act 1995 s 128(1)(e), (3), (4), (7)) (see above); the Merchant Shipping (Revocation) (Bermuda) Order 2002, SI 2002/3147 (made under the Merchant Shipping Act 1995 s 128(1)); the Merchant Shipping (Prevention of Air Pollution from Ships) Order 2006, SI 2006/1248 (made under the Merchant Shipping Act 1995 s 128(da), (3), (4)) (see note 6); the Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006, SI 2006/2950 (made under the Merchant Shipping Act 1995 s 128(1)(a), (3), (4)); the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924 (made under the Merchant Shipping Act 1995 s 128(5), (6)) (see note 6); and the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257 (made under the Merchant Shipping Act 1995 s 128(5), (6)) (see PARA 572).

In addition:

- 2 (1) the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010 (see PARA 404 et seq) were made under the Merchant Shipping (Prevention and Control of Pollution) Order 1987, SI 1987/470 (see above);

- 3 (2) the Merchant Shipping (Port State Control) Regulations 1995, SI 1995/3128 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 689 et seq) were made under the Merchant Shipping (Prevention of Oil Pollution) Order 1983, SI 1983/1106 (see above) and the Merchant Shipping (Prevention and Control of Pollution) Order 1987, SI 1987/470 (see above); and
- 4 (3) the Merchant Shipping (Delegation of Type Approval) Regulations 1996, SI 1996/147 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 593) and the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (see PARA 365 et seq) were both made under the Merchant Shipping (Prevention of Oil Pollution) Order 1983, SI 1983/1106 (see above).

As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 128 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 128 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 et seq.

Where, immediately before the commencement of the Merchant Shipping and Maritime Security Act 1997 s 7, there is in force any Order in Council made under the Merchant Shipping Act 1995 s 128(1) that confers power by any instrument made under the Order (a) to apply s 131(3) (see PARA 425); or (b) to make provision corresponding to that made in connection with offences under s 131 by s 144(4) (see PARA 435), the power conferred by the Order in Council is to be construed as a power to apply s 131(3) as amended by the Merchant Shipping and Maritime Security Act 1997 s 7(1) or, as the case may be, to make provision corresponding to that made by the Merchant Shipping Act 1995 s 144(4) as amended by the Merchant Shipping and Maritime Security Act 1997 s 7(3): s 7(6), (7).

8 Merchant Shipping Act 1995 s 128(2).

9 Ie without prejudice to the generality of the Merchant Shipping Act 1995 s 128(1).

10 Ie the Merchant Shipping Act 1995 s 128(1).

11 Ie the Merchant Shipping Act 1995 s 87 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 656), s 268 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 856), s 269 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 871) and s 270 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 857).

12 As to the meaning of 'relevant British possession' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 17 note 3.

13 As to the meaning of 'contravention' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 note 3.

14 Ie corresponding to that made in connection with offences under the Merchant Shipping Act 1995 s 131 (see PARA 425) by s 143(6) (see PARA 433), s 144 (see PARA 434) and s 146 (see PARA 435), whether by applying, or making provision for the application of, any of those provisions.

15 As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

16 Merchant Shipping Act 1995 s 128(3) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 3(1), (2)). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

17 Merchant Shipping Act 1995 s 128(3A) (added by the Merchant Shipping and Maritime Security Act 1997 s 12).

18 Merchant Shipping Act 1995 s 128(4) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 3(1), (3), Sch 7 Pt I). Regulations made by virtue of the Merchant Shipping Act 1995 s 128(4)(f) (see head (vi) in the text) may make provision corresponding to the provisions authorised for an Order by s 128(4)(a)-(e) (see heads (i)-(v) in the text): s 128(6).

19 Merchant Shipping Act 1995 s 128(5) (amended by the Merchant Shipping (Pollution) Act 2006 s 2(1), (3)). The Merchant Shipping Act 1995 s 128(5) applies in relation to Orders in Council and international agreements whenever made: see s 128(5).

20 The purposes so specified are: (1) giving effect to an agreement mentioned in the Merchant Shipping Act 1995 s 128(1)(a)-(da) (see heads (1)-(5) in the text); (2) providing as authorised by s 128(2) (see the text and note 8) in relation to such an agreement and the purposes of s 128(5) (see the text and note 19); and a statutory instrument containing an Order which contains a statement that it is made only for any of those purposes is subject to annulment in pursuance of a resolution of either House of Parliament: s 128(9) (amended by the Merchant Shipping (Pollution) Act 2006 s 2(1), (3)).

21 Merchant Shipping Act 1995 s 128(8).

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361. Prevention of air pollution from ships.

For the purpose of implementing the International Convention for the Prevention of Pollution from Ships 1973¹, the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008² provide for survey of ships³; issue and validity of appropriate certificates⁴; control of emissions of ozone-depleting substances, nitrogen oxides and sulphur oxides⁵; regulation of harbours and terminals operating vapour emission control systems for volatile compounds⁶; control of shipboard incineration⁷; quality of fuel oil supplied to relevant ships⁸; powers of inspection and detention of ships⁹; reporting of deficient ships by harbour masters¹⁰; offences and penalties¹¹; jurisdiction over offences committed outside United Kingdom waters¹²; and suspension of proceedings at flag state request¹³.

1 Ie the International Convention for the Prevention of Pollution from Ships 1973 Annex VI: see PARA 360 note 6. As to the Convention see PARA 367 note 7.

2 Ie the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, made under the Merchant Shipping (Prevention of Air Pollution from Ships) Order 2006, SI 2006/1248, arts 2, 3 (see PARA 360 note 6), the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996, SI 1996/282, art 2 (see PARA 363) and the Merchant Shipping Act 1995 s 128(5), (6) (see PARA 360).

3 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, regs 5-10.

4 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, regs 11-19.

5 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, regs 20-22, Sch 2.

6 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, reg 23.

7 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, reg 24.

8 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, reg 25, Sch 3.

9 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, regs 26-29, 31.

10 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, reg 30.

11 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, regs 32-34, 37.

12 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, reg 35.

13 See the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924, reg 36.

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362. Further provision for prevention of pollution from ships.

Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to any provision of the United Nations Convention on the Law of the Sea 1982¹ for the protection and preservation of the marine environment from pollution by matter from ships².

Such an Order may³ in particular include provision:

- 570 (1) corresponding to any provision that is authorised for the purposes of the provisions relating to Her Majesty's power to make an Order in Council relating to the prevention of pollution from ships etc⁴; and
- 571 (2) specifying areas of sea above any of the areas for the time being designated under the Continental Shelf Act 1964⁵ as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of that Convention⁶ for the protection and preservation of the marine environment⁷.

A draft of an Order in Council proposed to be so made must not be submitted to Her Majesty in Council unless the draft has been approved by resolution of each House of Parliament⁸.

1 Ie the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941): see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 10.

2 Merchant Shipping Act 1995 s 129(1). In exercise of the power so conferred Her Majesty made the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996, SI 1996/282 (see PARA 363) which came into force on 28 February 1996: art 1. The Merchant Shipping Act 1995 s 306(3) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41) does not apply to a statutory instrument containing an Order in Council under s 129: s 306(3).

As to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 129 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 129 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 et seq.

3 Ie without prejudice to the generality of the Merchant Shipping Act 1995 s 128(1): see PARA 360.

4 Ie authorised for the purposes of the Merchant Shipping Act 1995 s 128 by s 128(3), (4): see PARA 360.

5 Ie under the Continental Shelf Act 1964 s 1(7): see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636.

6 Ie the United Nations Convention on the Law of the Sea Pt XII (arts 192-237).

7 Merchant Shipping Act 1995 s 129(2). Provision authorising the making of regulations authorises the amendment or revocation of regulations made by virtue of s 128(4)(f) (see PARA 360 head (vi)): s 129(2).

8 Merchant Shipping Act 1995 s 129(3).

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363. Power to make implementing provisions.

The Secretary of State may make regulations for the purpose of giving effect to the United Nations Convention on the Law of the Sea¹ (the 'Convention') so far as it relates to the protection and preservation of the marine environment from pollution by matter from ships².

Such regulations may in particular include provision:

- 572 (1) with respect to the approval of documents and the carrying out of surveys and inspections, and for the issue, duration and recognition of certificates;
- 573 (2) with respect to the application of the regulations to the Crown and the extra-territorial operation of the regulations;
- 574 (3) that specified contraventions³ of the regulations be offences punishable on conviction on indictment by a fine and on summary conviction by a fine not exceeding the statutory maximum;
- 575 (4) that specified contraventions of the regulations be offences punishable only on summary conviction by a maximum fine not exceeding level 5 on the standard scale or such less amount as is prescribed by the regulations;
- 576 (5) for detaining any ship in respect of which such a contravention is suspected to have occurred and, in relation to such a ship, for applying the statutory provisions relating to enforcing the detention of a ship⁴ with such modifications, if any, as are prescribed by the regulations;
- 577 (6) in connection with offences created by the regulations, corresponding to any provision made in connection with the statutory provisions relating to the discharge of oil from ships in certain United Kingdom waters⁵, and the regulations may do so whether by applying, or making provision for the application of, any of those provisions, subject to such modifications as may be specified, or otherwise;
- 578 (7) specifying areas of sea above any of the areas for the time being designated under the Continental Shelf Act 1964⁶ as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of the Convention⁷ for the protection and preservation of the marine environment⁸.

Such regulations may:

- 579 (a) make different provision for different circumstances;
- 580 (b) make provision in terms of any document which the Secretary of State or any person considers relevant from time to time;
- 581 (c) provide for exemptions from any provisions of the regulations;
- 582 (d) provide for the delegation of functions exercisable by virtue of the regulations;
- 583 (e) include such incidental, supplemental and transitional provisions as appear to the Secretary of State to be expedient for the purposes of the regulations⁹.

¹ ie the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941); see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 10.

2 Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996, SI 1996/282, art 2(1). In particular the regulations may give effect to the following articles in the United Nations Convention on the Law of the Sea, namely arts 211, 218, 220 and 223-233: Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996 art 2(1). The Statutory Instruments Act 1946 (see **STATUTES**) applies to regulations made under the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996, SI 1996/282, and so applies as if such regulations were a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: art 2(4).

In exercise of the power so conferred the Secretary of State made the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (see PARA 365 et seq); the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996, SI 1996/2128 (amended by SI 1997/506) (defining the limits of the zone beyond the territorial sea around the United Kingdom and the Isle of Man in which jurisdiction is exercisable in order to prevent pollution by discharges from ships); and the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010 (see PARA 404 et seq). As to the Secretary of State see PARA 58.

Other regulations made under the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996, SI 1996/282, art 2 include: the Merchant Shipping (Reporting Requirements for Ships carrying Dangerous or Polluting Goods) (Amendment) Regulations 1999, SI 1999/2121; the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) (Amendment) Regulations 2004, SI 2004/930; the Merchant Shipping (Amendments to Reporting Requirements) Regulations 2005, SI 2005/1092; the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008, SI 2008/2924 (see PARA 361); the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257 (see also PARAS 360 note 7, 572 et seq); and the Merchant Shipping (Implementation of Ship-Source Pollution Directive) Regulations 2009, SI 2009/1210.

3 As to the meaning of 'contravention' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 note 3.

4 Ie the Merchant Shipping Act 1995 s 284: see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1253.

5 Ie corresponding to any provision made in connection with offences under the Merchant Shipping Act 1995 s 131 (see PARA 425) by s 143(6) (see PARA 433) and s 144 (see PARA 434) and s 146 (see PARA 435). Section 131(3) applies in respect of such contravention of the regulations made under the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996 as may be specified in those regulations as it applies in respect of offences under the Merchant Shipping Act 1995 s 131: Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996, SI 1996/282, art 3.

6 Ie under the Continental Shelf Act 1964 s 1(7): see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636.

7 Ie the United Nations Convention on the Law of the Sea Pt XII (arts 192-237).

8 Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996, SI 1996/282, art 2(2). As from a day to be appointed, art 2(2) is amended in regard to head (7) in the text to refer to an exclusive economic zone under the Marine and Coastal Access Act 2009 s 41(3): Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996, SI 1996/282, art 2(2) (prospectively amended by the Marine and Coastal Access Act 2009 Sch 4 Pt 2 para 3(1)-(3)). At the date at which this volume states the law no such day had been appointed. As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

9 Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996, SI 1996/282, art 2(3).

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364. Regulation of transfers between ships in territorial waters.

The Secretary of State may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships¹ while within United Kingdom waters², such provision as he considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources³.

Such regulations may in particular do any of the following things:

- 584 (1) prohibit transfers of any specified description or prohibit transfers if, or
unless, carried out in specified areas, circumstances or ways;
- 585 (2) make provision about:
 - 88 3. (a) the design of, and standards to be met by, ships and equipment;
 - 4. (b) the manning of ships, including the qualifications and experience to be possessed by persons of any specified description employed on board; and
 - 5. (c) the qualifications and experience to be possessed by persons, whether masters⁴ or not, controlling the carrying out of transfers or operations ancillary thereto;
- 89 586 (3) provide for proposed transfers to be notified to and approved by persons appointed by the Secretary of State or another person, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;
- 587 (4) provide:
 - 90 6. (a) for the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations; and
 - 7. (b) for references in the regulations to any document so specified to operate as references to that document as revised or reissued from time to time;
- 91 588 (5) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
- 589 (6) provide for the granting by the Secretary of State or another person of exemptions from specified provisions of the regulations, on such terms, if any, as the Secretary of State or that other person may specify, and for altering or cancelling exemptions;
- 590 (7) limit any provision of the regulations to specified cases or kinds of case⁵.

Such regulations may provide:

- 591 (i) that a contravention⁶ of the regulations is an offence punishable on summary conviction by a fine not exceeding £25,000 and on conviction on indictment by imprisonment for a term not exceeding two years or a fine or both;

- 592 (ii) that any such contravention is an offence punishable only on summary conviction by a fine not exceeding £25,000 or such lower amount as is prescribed by the regulations;
- 593 (iii) that, in such cases as are prescribed by the regulations, such persons as are so prescribed are each guilty of an offence created by virtue of head (i) or (ii) above⁷.

Such regulations may make different provision for different classes or descriptions of ships and for different circumstances, and make such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or expedient⁸.

1 As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

2 As to the meaning of 'United Kingdom waters' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 48 note 10.

3 Merchant Shipping Act 1995 s 130(1). At the date at which this volume states the law no such regulations had been made and none have effect as if so made. As to the making of regulations generally see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65; and as to the Secretary of State's power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41.

As to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 130 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 130 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46 et seq.

4 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.

5 Merchant Shipping Act 1995 s 130(2).

6 As to the meaning of 'contravention' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 note 3.

7 Merchant Shipping Act 1995 s 130(3).

8 Merchant Shipping Act 1995 s 130(4).

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(ii) Prevention of Oil Pollution

A. IN GENERAL

365. Application and exemptions.

Unless expressly provided otherwise, the following provisions¹ apply to:

- 594 (1) United Kingdom ships²;
- 595 (2) other ships while they are within the United Kingdom or the territorial waters thereof³; and
- 596 (3) government ships⁴ registered in the United Kingdom and government ships not so registered but held for the purposes of Her Majesty's government in the United Kingdom⁵.

The following provisions do not apply to any warship, naval auxiliary or other ship owned or operated by a state and used, for the time being, only on government non-commercial service⁶.

The Secretary of State may exempt a ship of a new type whose constructional features are such as to render the application of any of specified provisions⁷ relating to construction and equipment unreasonable or impracticable from those provisions, provided that the construction and equipment of that ship provides equivalent protection against pollution by oil⁸, having regard to the service for which it is intended⁹. Particulars of any such exemption granted by the Secretary of State must be indicated in the IOPP¹⁰ or UKOPP¹¹ Certificate¹².

In ships, other than oil tankers¹³, fitted with cargo spaces which are constructed and used to carry oil in bulk of an aggregate capacity of 200 cubic metres or more, specified requirements¹⁴ for oil tankers also apply to the construction and operation of these spaces¹⁵.

The Secretary of State may grant exemptions from all or any of the following provisions, as may be specified in the exemption, for classes of ships or individual ships on such terms, if any, as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption¹⁶.

1 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: see PARA 366 et seq.

2 For these purposes, 'United Kingdom ship' has the same meaning as in the Merchant Shipping Act 1995 s 85(2) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 230): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). 'Ship' means a vessel of any type whatsoever operating in the marine environment including waters navigable by sea-going vessels and includes submersible craft, floating craft and a structure which is a fixed or floating platform but, except in relation to regs 11-16 (see PARA 374 et seq), excludes hovercraft: reg 1(2) (definition amended by SI 2009/1210).

3 As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

4 For these purposes, 'government ship' has the same meaning as in the Merchant Shipping Act 1995 s 308(4) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 20 note 3): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 2(1). As to transitional provision see reg 1A (added by SI 2004/303).

6 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 2(2).

7 Ie any of the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 10-32: see PARA 373 et seq.

8 For these purposes, 'oil' means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products, other than oil-like substances which are subject to the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010 (see PARA 404 et seq); Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2); Interpretation Act 1978 s 17(2)(b). 'Crude oil' means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes (1) crude oil from which certain distillate fractions may have been removed; and (2) crude oil to which certain distillate fractions may have been added: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 2(3). As to the Secretary of State see PARA 58.

10 Ie the IOPP Certificate referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7: see PARA 370.

11 Ie the UKOPP Certificate referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7.

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 2(4).

13 For these purposes, 'oil tanker' means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes a combination carrier or a chemical tanker when it is carrying a cargo or part cargo of oil in bulk: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). 'Chemical tanker' means a ship constructed or adapted primarily to carry a cargo of noxious liquid substances in bulk and includes an oil tanker when carrying a cargo or part cargo of noxious liquid substances in bulk (reg 1(2)); and 'combination carrier' means a ship designed to carry either oil or solid cargoes in bulk (reg 1(2)).

14 Ie the requirements of Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10 (see PARA 373), reg 12 (see PARA 375), reg 13 (see PARA 376), reg 15(1)-(3) (see PARA 378), reg 16 (see PARA 379), reg 24 (see PARA 389), reg 26 (see PARA 391) and reg 28(4) (see PARA 392).

15 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 2(4). Where, however, such aggregate capacity is less than 1,000 cubic metres, it is sufficient to comply with the requirements of reg 15(4) (see PARA 378) as if they applied to the ship in lieu of those in reg 15(1)-(3): reg 2(4).

16 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 2(5).

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366. Equivalents.

The Secretary of State may permit any fitting, material, appliance or apparatus to be fitted in a ship¹ as an alternative to that otherwise required² if such fitting, material, appliance or apparatus is at least as effective as that otherwise required; but he must not permit the substitution of operational methods to control the discharge³ of oil as being equivalent to those design and construction features which are otherwise⁴ prescribed⁵.

1 As to the meaning of 'ship' see PARA 365 note 2.

2 Ie by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: see PARA 367 et seq.

3 For these purposes, 'discharge', in relation to harmful substances or effluents containing such substances, means any release, howsoever caused, from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying; but does not include (1) dumping within the meaning of the Convention for the Prevention of Marine Pollution by the Dumping of Wastes and Other Matter 1972 (London, Mexico City, Moscow and Washington, 29 December 1972 to 31 December 1973; TS 43 (1976); Cmnd 6486); or (2) release of harmful substances directly arising from the exploration, exploitation and associated offshore processing of sea bed mineral resources; or (3) release of harmful substances for purposes of legitimate scientific research into pollution abatement or control; and 'to discharge' is to be construed accordingly: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). 'Harmful substance' means any substance which, if introduced into the sea, is liable to create hazards to human living resources and marine life, to damage amenities or interfere with other legitimate uses of the sea, and includes oil: reg 1(2). 'Sea' includes any estuary or arm of the sea: reg 1(2). As to the meaning of 'oil' see PARA 365 note 8.

4 See note 2.

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 3. As to the Secretary of State see PARA 58.

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B. SURVEYS, CERTIFICATES AND OIL RECORD BOOK

367. Surveys.

A United Kingdom oil tanker¹ of 150 GT² and above and every other United Kingdom ship³ of 400 GT and above must be subject to the following surveys:

- 597 (1) before the ship is put into service, or before an IOPP Certificate⁴ or UKOPP Certificate⁵ is first issued in relation to the ship, an initial survey⁶;
- 598 (2) within five years of the first issue of an IOPP Certificate or UKOPP Certificate, and afterwards at intervals of no more than five years, a renewal survey⁷;
- 599 (3) after a repair resulting from investigations, or whenever any important repairs or renewals are made, an additional survey⁸;
- 600 (4) within three months before or after the second or third anniversary date⁹ of the issue of a ship's IOPP Certificate, an intermediate survey¹⁰; and
- 601 (5) within three months before or after each anniversary date of the issue of a ship's IOPP Certificate, other than when an intermediate survey is required to be carried out within that period, an annual survey¹¹.

1 As to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8. As to the meaning of 'United Kingdom' see PARA 1 note 2.

2 For these purposes, 'GT' means gross registered tonnage and the gross registered tonnage of a ship having alternative gross registered tonnages is to be taken to be the larger of those tonnages: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

3 As to the meaning of 'United Kingdom ship' see PARA 365 note 2.

4 'IOPP Certificate' means the International Oil Pollution Prevention Certificate issued in accordance with the Convention: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). As to the meaning of 'Convention' see note 6.

5 'UKOPP Certificate' means a certificate entitled the United Kingdom Oil Pollution Prevention Certificate issued by a certifying authority and evidencing compliance with the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: reg 1(2). As to the meaning of 'certifying authority' see PARA 368 note 5.

6 As set out in the Convention Annex I reg 4(1)(a): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(1)(a) (reg 4 substituted by SI 2004/303). 'Convention' means the International Convention for the Prevention of Pollution from Ships 1973, including its protocols, Annex I (but no other Annex) and appendices thereto, as amended by the Protocol of 1978 to that Convention and includes all the amendments adopted by the International Maritime Organisation's Marine Environment Protection Committee up to 4 December 2003 and any further amendments considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2) (definition amended by SI 2004/303, SI 2005/1916). 'Merchant Shipping Notice' means a Notice described as such and issued by the Maritime and Coastguard Agency, an executive agency of the Department for Transport; and any reference to a particular Merchant Shipping Notice includes a reference to any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2) (definition amended by SI 2004/303). 'Maritime and Coastguard Agency' means the Maritime and Coastguard Agency, an executive agency of the Department for Transport: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI

1996/2154, reg 1(2) (definition substituted by SI 2004/303). As to the Secretary of State see PARA 58. The Agency's website was, at the date at which this volume states the law, www.mcga.gov.uk.

7 le as set out in the Convention Annex I reg 4(1)(b): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(1)(b) (as substituted: see note 6).

8 le as set out in the Convention Annex I reg 4(1)(e): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(1)(c) (as substituted: see note 6).

9 'Anniversary date' means the day and month in each year corresponding to the date of expiry of the IOPP Certificate or UKOPP Certificate: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2) (definition added by SI 2004/303).

10 le as set out in the Convention Annex I reg 4(1)(c): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(2)(a) (as substituted: see note 6).

11 le as set out in the Convention Annex I reg 4(1)(d): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(2)(b) (as substituted: see note 6).

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368. Responsibilities of owner and master.

The owner and master of every ship¹ must ensure that:

- 602 (1) the condition of the ship and its equipment is maintained to conform to certain requirements² so as to ensure that the ship in all respects will remain fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment³;
- 603 (2) after any survey of the ship⁴ has been completed, no change is made in the structure, equipment, systems, fittings, arrangements or material covered by the survey without the approval of the appropriate certifying authority⁵, or of the administration of the state which carried out the survey for the ship, except by direct replacement⁶;
- 604 (3) whenever an accident occurs to the ship or a defect is discovered which, in either case, substantially affects the integrity of the ship or the efficiency or completeness of its equipment, such an accident or defect must be reported (a) if the ship is a United Kingdom ship, at the earliest opportunity to the Secretary of State and to any other appropriate certifying authority⁷; (b) if the ship is a United Kingdom ship in a port outside the United Kingdom, additionally to the proper officer⁸ and appropriate authorities of the country in which the port is situated⁹; and (c) if the ship is a non-United Kingdom ship in a port in the United Kingdom, at the earliest opportunity to the Secretary of State¹⁰.

Whenever an accident or defect is reported to the Secretary of State or a certifying authority¹¹, or to the proper officer¹², the Secretary of State, certifying authority and proper officer must cause investigations to be initiated to determine whether or not a survey by a surveyor is necessary and, if a survey is found to be necessary, require that survey to be carried out¹³.

1 As to the meaning of 'ship' see PARA 365 note 2.

2 I.e the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, in the case of a United Kingdom ship or any ship surveyed pursuant to those Regulations, or the requirements of the Convention Annex I in the case of any other ship: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 5(1) (reg 5 substituted by SI 2004/303). As to the meaning of 'United Kingdom ship' see PARA 365 note 2. As to the meaning of 'Convention' see PARA 367 note 6.

3 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 5(1) (as substituted: see note 2).

4 I.e as required by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, or by the Convention Annex I: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 5(2) (as substituted: see note 2).

5 'Certifying authority' means the Secretary of State or any person authorised by the Secretary of State and includes in particular, if so authorised, Lloyd's Register of Shipping, the British Committee of Bureau Veritas, the British Committee of Det Norske Veritas, the British Committee of Germanischer Lloyd, and the British Technical Committee of the American Bureau of Shipping: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). As to the Secretary of State see PARA 58.

6 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 5(2) (as substituted: see note 2).

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 5(3)(a) (as substituted: see note 2).

8 'Proper officer' means a consular officer appointed by Her Majesty's government in the United Kingdom and, in relation to a port in a country outside the United Kingdom which is not a foreign country, also any officer exercising in that port functions similar to those of a superintendent: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 5(3)(b) (as substituted: see note 2).

10 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 5(3)(c) (as substituted: see note 2).

11 le under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 5(3)(a): reg 5(4)(a) (as substituted: see note 2).

12 le under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 5(3)(b): reg 5(4)(b) (as substituted: see note 2).

13 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 5(4) (as substituted: see note 2).

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369. Issue and endorsement of certificates.

Where a certifying authority¹ is satisfied after the completion of an initial or renewal survey² that certain requirements³ are being complied with, that certifying authority must issue (1) to any oil tanker⁴ of 150 GT⁵ and above, and any other ship⁶ of 400 GT and above, engaged in international voyages, an IOPP Certificate⁷; and (2) to any oil tanker of 150 GT and above, and any other ship of 400 GT and above, not engaged in international voyages, a UKOPP Certificate⁸.

Where the certifying authority is satisfied after the completion of an intermediate or annual survey⁹ that certain requirements¹⁰ are being complied with, that certifying authority must so endorse the IOPP Certificate issued to the ship¹¹.

The Secretary of State may, through a proper officer or otherwise, request the administration of a state which is a party to the Convention to carry out a survey of a United Kingdom ship and, if he is satisfied that certain requirements¹² have been complied with (a) to issue or authorise the issue of an IOPP Certificate to the ship, or to endorse or authorise the endorsement of such a certificate¹³; (b) to include in the certificate a statement to the effect that it has been issued or endorsed at the request of the Secretary of State¹⁴; and (c) to transmit a copy of the survey report and the certificate to the Secretary of State as soon as possible¹⁵.

The Secretary of State may, at the request of the administration of a state which is a party to the Convention, carry out a survey of a ship registered in that state and, if satisfied that certain requirements¹⁶ are complied with, issue an IOPP Certificate to the ship or endorse such a certificate¹⁷.

1 As to the meaning of 'certifying authority' see PARA 368 note 5.

2 I.e. a survey carried out in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(1)(a) or (b): see PARA 367 text and notes 4-7.

3 I.e. the requirements of the Convention Annex I: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(1) (reg 6 substituted by SI 2004/303). As to the meaning of 'Convention' see PARA 367 note 6.

4 As to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.

5 As to the meaning of 'GT' see PARA 367 note 2.

6 As to the meaning of 'ship' see PARA 365 note 2.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(1)(a) (as substituted: see note 3). As to the meaning of 'IOPP Certificate' see PARA 367 note 4. If any oil tanker of 150 GT and above and any other ship of 400 GT and above which was previously under the flag of another state becomes a United Kingdom ship engaged in voyages to ports or offshore terminals under the jurisdiction of other parties to the Convention, a certifying authority must issue an IOPP Certificate to the ship if it is fully satisfied that the ship is in compliance with the requirements of the Convention Annex I reg 4(4)(a), (b): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(3) (as so substituted). An IOPP Certificate issued or endorsed in accordance with reg 6 must be drawn up in a form corresponding to the model given in the Convention Annex I Appendix II: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(10) (as so substituted). As to the meaning of 'United Kingdom ship' see PARA 365 note 2.

8 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(1)(b) (as substituted: see note 3). As to the meaning of 'UKOPP Certificate' see PARA 367 note 5. If any oil tanker of 150 GT and above and any other ship of 400 GT and above which was previously under the flag of another state becomes a United Kingdom ship not engaged in voyages to ports or offshore terminals under the jurisdiction of other parties to the Convention, a certifying authority must issue a UKOPP Certificate to the ship if it is fully satisfied that the ship is in compliance with the requirements of the Convention Annex I reg 4(4)(a), (b): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(4) (as so substituted). A UKOPP Certificate issued in accordance with reg 6 must be drawn up in the form corresponding to the model given in the Convention Annex I Appendix II, with the substitution for references to 'IOPP Certificate' of references to 'UKOPP Certificate', and for references to the regulations of the MARPOL Convention of references to corresponding provisions in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: reg 6(11) (as so substituted).

9 le a survey carried out in accordance with SI 1996/2154 reg 4(2)(a) or (b): see PARA 367 text and notes 10, 11.

10 le the requirements of the Convention Annex I: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(1) (as substituted: see note 3).

11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(2) (as substituted: see note 3).

12 le the requirements of the Convention Annex I: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(5) (as substituted: see note 3). As to the Secretary of State see PARA 58.

13 le in accordance with the requirements of the Convention Annex I: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(5)(a) (as substituted: see note 3).

14 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(5)(b) (as substituted: see note 3).

15 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(5)(c) (as substituted: see note 3). A certificate endorsed in accordance with reg 6(5) has the same force and receives the same recognition as a certificate issued or endorsed in accordance with reg 6(1)-(3): reg 6(6) (as so substituted).

16 le the requirements of the Convention Annex I: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(7) (as substituted: see note 3).

17 le in accordance with the requirements of the Convention Annex I: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6(7) (as substituted: see note 3). The Secretary of State must include in any certificate issued or endorsed in accordance with reg 6(7) a statement to the effect that it has been issued or endorsed at the request of that administration, and must transmit a copy of the survey report and the certificate to that administration as soon as possible: reg 6(8) (as so substituted). A certificate issued or endorsed in accordance with reg 6(7) has effect as if issued or endorsed by the administration of the state which requested the survey of the ship to be carried out: reg 6(9) (as so substituted).

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370. Duration and validity of certificates.

An IOPP Certificate¹ or UKOPP Certificate² must be issued (1) on the date of the completion of the relevant survey³; (2) as being valid from the date of issue⁴; and (3) for a period of validity not exceeding five years⁵. Where a renewal survey⁶ has been completed within a period of three months before the date of expiry of an IOPP or UKOPP Certificate, the new certificate must be issued as being valid from the date of expiry of the existing certificate⁷. Where a renewal survey⁸ has been completed after the expiry of an IOPP or UKOPP Certificate, the new certificate must be issued as being valid from the date of expiry of the expired certificate⁹.

Where an annual or intermediate survey is completed before the period prescribed for such a survey¹⁰ (a) the anniversary date¹¹ shown on the IOPP Certificate must be amended by endorsement to a date not more than three months later than the date on which the survey was completed¹²; (b) subsequent annual or intermediate surveys¹³ must be completed at the intervals prescribed¹⁴ using the new anniversary date¹⁵; and (c) the expiry date may remain unchanged provided one or more annual or intermediate surveys, as appropriate, are carried out so that the maximum prescribed intervals¹⁶ between the surveys are not exceeded¹⁷.

An IOPP or UKOPP Certificate ceases to be valid (i) if its period of validity has been exceeded and the certificate has either not been extended by the appropriate certifying authority¹⁸ or the period of any such extension has expired¹⁹; (ii) if the relevant surveys have not been completed within the periods specified²⁰ and the certificate has not been endorsed²¹; or (iii) on transfer of the ship to the flag of another state²².

1 As to the meaning of 'IOPP Certificate' see PARA 367 note 4.

2 As to the meaning of 'UKOPP Certificate' see PARA 367 note 5.

3 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(1)(a) (reg 7 substituted by SI 2004/303).

4 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(1)(b) (as substituted: see note 3).

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(1)(c) (as substituted: see note 3).

6 I.e. as required under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(1)(b): see PARA 367 text and note 7.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(2) (as substituted: see note 3).

8 I.e. as required under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(1)(b): see PARA 367 text and note 7.

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(3) (as substituted: see note 3).

10 I.e. prescribed in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(2): see PARA 367 text and notes 9-11.

11 As to the meaning of 'anniversary date' see PARA 367 note 9.

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(4)(a) (as substituted: see note 3).

13 le as required under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(2): see PARA 367 text and notes 9-11.

14 le prescribed by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(2): see PARA 367 text and notes 9-11.

15 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(4)(b) (as substituted: see note 3).

16 le prescribed in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(2): see PARA 367 text and notes 9-11.

17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(4)(c) (as substituted: see note 3).

18 le in accordance with Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8: see PARA 371. As to the meaning of 'certifying authority' see PARA 368 note 5.

19 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(5)(a) (as substituted: see note 3).

20 le specified in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4: see PARA 367.

21 le in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 6: reg 7(5)(b) (as substituted: see note 3).

22 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(5)(c) (as substituted: see note 3).

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371. Extension of validity of certificates.

Where an IOPP Certificate¹ has been issued for a period of validity of less than five years and the intermediate and annual surveys² have been completed, the appropriate certifying authority³ may extend the validity of that certificate so that the certificate is valid for a maximum period of five years⁴.

Where a renewal survey⁵ has been completed before the expiry of an IOPP Certificate or UKOPP Certificate⁶ but the new certificate cannot be issued or placed on board the ship⁷ before the expiry of the existing certificate, the appropriate certifying authority may endorse the existing certificate as valid for a period not exceeding five months from the expiry date of the existing certificate⁸. Where a renewal survey⁹ has not been completed before the expiry of an IOPP Certificate or UKOPP Certificate and at the time of expiry the ship is not in a port in which it is to be surveyed, the appropriate certifying authority may, where it appears to it proper and reasonable to do so, extend the validity of the certificate, solely for the purpose of allowing the ship to complete its voyage to its port of survey, for a period of no more than three months¹⁰.

Where no other extension has been granted, the appropriate certifying authority may extend the validity of the IOPP Certificate of a ship used solely on short international voyages¹¹ for a period of no more than one month¹². An extension of validity¹³ must be disregarded for the purposes of determining the date of expiry of an existing UKOPP Certificate or IOPP Certificate¹⁴.

In special circumstances¹⁵, where a renewal survey¹⁶ (1) has been completed after the expiry of the UKOPP Certificate or IOPP Certificate¹⁷; (2) has been completed during the period for which the validity of the UKOPP Certificate or IOPP Certificate has been extended¹⁸; or (3) has been completed during the period for which the validity of the UKOPP Certificate or IOPP Certificate has been extended¹⁹, the new certificate may be issued as being valid from the date of the completion of the renewal survey²⁰.

1 As to the meaning of 'IOPP Certificate' see PARA 367 note 4.

2 I.e. as required under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(2): see PARA 367 text and notes 9-11.

3 As to the meaning of 'certifying authority' see PARA 368 note 5.

4 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8(1) (reg 8 substituted by SI 2004/303).

5 I.e. as required under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(1)(b): see PARA 367 text and note 7.

6 As to the meaning of 'UKOPP Certificate' see PARA 367 note 5.

7 As to the meaning of 'ship' see PARA 365 note 2.

8 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8(2) (as substituted: see note 4).

9 I.e. as required under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(1)(b): see PARA 367 text and note 7.

10 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8(3) (as substituted: see note 4).

11 'Short international voyage' means a voyage from a port in one country to which the Convention applies to a port in another country, or conversely a voyage (1) in the course of which a ship is not more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety; and (2) which does not exceed 600 nautical miles in distance between the last port of call in the country in which the voyage begins and the last port of call in the scheduled voyage before beginning a return voyage, and which on the return voyage does not exceed 600 nautical miles in distance between the port of call in which the ship commences its return voyage and the first port of call in the country in which the voyage began, and for the purposes of this definition, no account is to be taken of any deviation by a ship from her intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor, if applicable, the charterer of the ship could have prevented or forestalled: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2) (definition added by SI 2004/303). As to the meaning of 'Convention' see PARA 367 note 6.

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8(4) (as substituted: see note 4).

13 *le* under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8(3) or (4).

14 *le* under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 7(2) or (3): reg 8(5) (as substituted: see note 4).

15 *le* circumstances determined by the Maritime and Coastguard Agency: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8(6) (as substituted: see note 4).

16 *le* as required under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 4(1)(b): see PARA 367 text and note 7.

17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8(6)(a) (as substituted: see note 4).

18 *le* in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8(3): reg 8(6)(b) (as substituted: see note 4).

19 *le* in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8(4): reg 8(6)(c) (as substituted: see note 4).

20 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 8(6) (as substituted: see note 4).

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372. Procedure to be adopted when corrective action is necessary.

In any case where the certifying authority¹ determines that the condition of a United Kingdom ship² or its equipment does not correspond with the particulars of the IOPP³ or UKOPP⁴ Certificate or is such that the ship is not fit to proceed to sea⁵ without presenting an unreasonable threat of harm to the marine environment, the certifying authority must advise the owner or master of the corrective action which in its opinion is required, and must give notice thereof to the Secretary of State⁶.

If such corrective action is not taken within such period, being a reasonable period, as the certifying authority may specify, the certifying authority must, at the end of that time, immediately notify the Secretary of State who may, on receipt of such notification, suspend the validity of the IOPP or UKOPP Certificate issued for the ship and must give notice of any such suspension to the owner and to the certifying authority⁷.

The master must thereupon deliver up the certificate issued to the certifying authority on demand⁸.

Where the ship is in a port of a Convention country⁹, other than the United Kingdom, and corrective action has not been taken, the certifying authority must in addition immediately notify the appropriate authorities of the country in which the port is situated¹⁰.

Where, in the case of a ship of a Convention country, other than the United Kingdom, which is for the time being in a United Kingdom port, the nominated surveyor¹¹ or the recognised organisation responsible for issuing the IOPP Certificate to the ship determines that it is necessary to withdraw the certificate, a report must, unless made by the nominated surveyor or recognised organisation, be made by the master of the ship to the Secretary of State¹². The Secretary of State may then take such steps as will ensure that the ship will not sail until she can proceed to sea or leave the port for the purposes of proceeding to the nearest appropriate repair yard available without presenting an unreasonable threat of harm to the marine environment¹³.

1 As to the meaning of 'certifying authority' see PARA 368 note 5.

2 As to the meaning of 'United Kingdom ship' see PARA 365 note 2.

3 As to the meaning of 'IOPP Certificate' see PARA 367 note 4.

4 As to the meaning of 'UKOPP Certificate' see PARA 367 note 5.

5 As to the meaning of 'sea' see PARA 366 note 3.

6 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 9(1). As to the Secretary of State see PARA 58.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 9(2).

8 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 9(3).

9 'Convention country' means a country which is a party to the Convention: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). As to the meaning of 'Convention' see PARA 367 note 6.

10 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 9(4).

11 'Surveyor' means a surveyor appointed by a certifying authority: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, s 1(2). As to the meaning of 'certifying authority' see PARA 368 note 5.

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 9(5).

13 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 9(5).

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373. Oil record book.

Every ship¹ of 400 GT² and above, other than an oil tanker³, and every oil tanker of 150 GT and above, must be provided with an Oil Record Book, Part I (Machinery Space Operations)⁴. Every oil tanker of 150 GT and above must also be provided with an Oil Record Book, Part II (Cargo/Ballast Operations)⁴. The Oil Record Book must be in the form prescribed in the Convention⁵.

The Oil Record Book must be completed on each occasion, on a tank-to-tank⁶ basis if appropriate, whenever any of the following operations take place in the ship:

605 (1) for machinery space operations (all ships):

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- 8. (a) ballasting or cleaning of oil fuel⁷ tanks;
- 9. (b) discharging⁸ ballast or cleaning water from oil fuel tanks;
- 10. (c) disposing oily residues (sludge);
- 11. (d) discharging overboard bilge water which has accumulated in machinery spaces;

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606 (2) for cargo/ballast operation (oil tankers):

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- 12. (a) loading oil cargo;
- 13. (b) internal transfer of oil cargo during voyage;
- 14. (c) unloading oil cargo;
- 15. (d) ballasting cargo tanks and dedicated clean ballast⁹ tanks;
- 16. (e) cleaning cargo tanks including crude oil¹⁰ washing;
- 17. (f) discharging ballast except from segregated ballast¹¹ tanks;
- 18. (g) discharging water from slop tanks¹²;
- 19. (h) closing, after the discharge of the contents of the slop tanks, all valves or similar devices opened to permit such operations;
- 20. (i) closing those valves necessary for the isolation of dedicated clean ballast tanks from cargo and stripping lines after slop tank discharge operations; and
- 21. (j) disposing residues¹³.

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In the event of a discharge of oil or oily mixture¹⁴ or in the event of an accidental or other exceptional discharge of oil¹⁵, a statement must be made in the Oil Record Book of the circumstances of, and the reasons for, the discharge¹⁶.

Each operation described above must be fully recorded without delay in the Oil Record Book so that all entries in the book appropriate to that operation are completed¹⁷. Each completed operation must be signed by the officer or officers in charge of the operations concerned and each completed page must be signed by the master¹⁸.

The Oil Record Book must be kept in such a place as to be readily available for inspection at all reasonable times and, except in the case of unmanned ships under tow, must be kept on board¹⁹. It must be preserved for a period of three years after the last entry has been made²⁰.

The Secretary of State or a person authorised by the certifying authority²¹ may inspect the Oil Record Book on board whilst the ship is in a port or offshore terminal and may make a copy of any entry in that book and may require the master of the ship to certify that the copy is a true copy of such an entry²². Any such copy is admissible in any judicial proceedings as evidence of the facts stated in the entry²³. The inspection of an Oil Record Book and the taking of a certified copy by the Secretary of State, or a person so authorised, must be performed as expeditiously as possible without causing the ship to be unduly delayed²⁴.

1 As to the meaning of 'ship' see PARA 365 note 2.

2 As to the meaning of 'GT' see PARA 367 note 2.

3 As to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.

4 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(1).

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(1). As to the meaning of 'Convention' see PARA 367 note 6.

6 For these purposes, 'tank' means an enclosed space which is formed by the permanent structure of a ship and which is designed for the carriage of liquid in bulk: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

7 For these purposes, 'oil fuel' means any oil used as a fuel in connection with the propulsion and auxiliary machinery of the ship in which such oil is carried: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

8 As to the meaning of 'discharge' see PARA 366 note 3.

9 For these purposes, 'clean ballast' means the ballast in a tank which, since oil was last carried therein, has been so cleaned that the effluent therefrom, if it were discharged from a ship which is stationary into clean calm water on a clear day would not produce visible traces of oil on the surface of the water or on adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; if the ballast is discharged through an approved oil discharge monitoring and control system, evidence based on such a system that the oil content of the effluent did not exceed 15 ppm is determinative that the ballast was clean, notwithstanding the presence of visible traces referred to above: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). 'Ppm' means parts per million: reg 1(2).

10 As to the meaning of 'crude oil' see PARA 365 note 8.

11 For these purposes, 'segregated ballast' means the ballast water introduced into a tank which is completely separated from the cargo oil and oil fuel system and which is permanently allocated to the carriage of ballast or to the carriage of ballast or cargoes other than oil or noxious liquid substances: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

12 For these purposes, 'slop tank' means a tank specifically designed for the collection of tank drainings, tank washings and other oil mixtures: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

13 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(2).

14 As is referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 11-11B (see PARA 374). For these purposes, 'oily mixture' means a mixture with any oil content: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

15 As is not excepted by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 11-11B: see PARA 374.

16 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(3) (amended by SI 2009/1210).

17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(4).

18 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(4).

- 19 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(5).
- 20 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(5).
- 21 As to the meaning of 'certifying authority' see PARA 368 note 5.
- 22 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(6). As to the Secretary of State see PARA 58.
- 23 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(6).
- 24 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10(6).

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C. CONTROL OF DISCHARGE OF OIL

374. General exceptions.

Certain provisions¹ do not apply to:

- 607 (1) any discharge² into the sea³ of oil⁴ or oily mixture⁵ necessary for the purpose of securing the safety of a ship⁶ or saving life at sea; or
- 608 (2) any discharge, other than a discharge from an excepted ship⁷, into the sea of oil or oily mixture which results from damage to a ship or its equipment provided that: all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and the owner or the master did not act either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or
- 609 (3) any approved⁸ discharge into the sea of substances containing oil, when being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution; any such discharge is subject to the approval of any government in whose jurisdiction it is contemplated the discharge will be made⁹.

The above provisions¹⁰ do not apply to any discharge from an excepted ship into a part of the sea which is within the United Kingdom¹¹ or its territorial waters of oil or oily mixture which results from damage to a ship or its equipment if:

- 610 (a) the damage was not caused by a person connected with the excepted ship's business¹² acting with intent, recklessly, or with serious negligence;
- 611 (b) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and
- 612 (c) neither the owner nor the master of the excepted ship acted with intent to cause damage; or recklessly and with knowledge that damage would probably result¹³.

The above provisions¹⁴ do not apply to any discharge from a UK excepted ship¹⁵ into a part of the sea other than the United Kingdom or its territorial waters of oil or oily mixture which results from damage to a ship or its equipment if:

- 613 (i) the damage was not caused by a person connected with the UK excepted ship's business acting with intent, recklessly, or with serious negligence;
- 614 (ii) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and
- 615 (iii) neither the owner nor the master of the UK excepted ship acted with intent to cause damage; or recklessly and with knowledge that damage would probably result¹⁶.

The above provisions¹⁷ do not apply to any discharge from a non-UK excepted ship¹⁸ into a part of the sea other than the United Kingdom or its territorial waters of oil or oily mixture which results from damage to a ship or its equipment if:

- 616 (A) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and
- 617 (B) neither the owner nor the master of the non-UK excepted ship acted with intent to cause damage; or recklessly and with knowledge that damage would probably result¹⁹.

1 le the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12 (see PARA 375), reg 13 (see PARA 376) and reg 16 (see PARA 379).

2 As to the meaning of 'discharge' see PARA 366 note 3.

3 As to the meaning of 'sea' see PARA 366 note 3.

4 As to the meaning of 'oil' see PARA 365 note 8.

5 As to the meaning of 'oily mixture' see PARA 373 note 14.

6 As to the meaning of 'ship' see PARA 365 note 2.

7 For the purposes of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 11-11B, 'excepted ship' means a seagoing vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft but does not include a structure which is a fixed or floating platform: reg 11C(a) (regs 11A-11C added by SI 2009/1210).

8 For these purposes, 'approved' means (1) approved by the Secretary of State or by a certifying authority specified in Merchant Shipping Notice MSN 1734 or MSN 1735 in relation to any equipment or arrangement mentioned in that notice; (2) manufactured and tested in accordance with the Merchant Shipping (Marine Equipment) Regulations 1999, SI 1999/1957, in relation to any equipment or arrangement to which those regulations apply: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2) (definition substituted by SI 1999/1957). As to the Secretary of State see PARA 58. As to the meaning of 'certifying authority' see PARA 368 note 5. As to the meaning of 'Merchant Shipping Notice' see PARA 367 note 6.

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 11.

10 See note 1.

11 As to the meaning of 'United Kingdom' see PARA 1 note 2.

12 For the purposes of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 11-11B, reference to a person connected with a ship's business includes, in particular (1) a seafarer on the ship; (2) the master; (3) the owner; (4) an owner of cargo carried on the ship; and (5) a classification society which has issued a class certificate showing that the ship conforms to the class standards stipulated by that society: reg 11C(d) (as added: see note 7).

13 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 11A (as added: see note 7).

14 See note 1.

15 For the purposes of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 11-11B, 'UK excepted ship' means an excepted ship which is a United Kingdom ship: reg 11C(b) (as added: see note 7). As to the meaning of 'United Kingdom ship' see PARA 365 note 2.

16 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 11B(1) (as added: see note 7).

17 See note 1.

18 For the purposes of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 11-11B, 'non-UK excepted ship' means an excepted ship which is not a UK excepted ship: reg 11C(c) (as added: see note 7).

19 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 11B(2) (as added: see note 7).

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375. Ships other than oil tankers and machinery space bilges of oil tankers.

Certain provisions apply¹ to:

- 618 (1) United Kingdom ships² other than oil tankers³; and
- 619 (2) United Kingdom oil tankers in relation to discharges⁴ from their machinery space bilges, unless mixed with oil⁵ cargo residue, but excluding cargo pump room bilges,

wherever they may be⁶; and the following provisions also apply⁷ to:

- 620 (a) other ships⁸, other than oil tankers; and
- 621 (b) other oil tankers, in relation to discharges from their machinery space bilges, unless mixed with oil cargo residue, but excluding cargo pump room bilges,

wherever they may be⁹.

A ship to which these provisions apply must not discharge oil or oily mixture¹⁰ into any part of the sea¹¹ unless all the following conditions are satisfied:

- 622 (i) the ship is proceeding on a voyage;
- 623 (ii) the ship is not within a special area¹²;
- 624 (iii) the oil content of the effluent does not exceed 15 ppm¹³; and
- 625 (iv) the ship has in operation the required¹⁴ filtering equipment¹⁵ and the oil discharge and monitoring and control system¹⁶.

In the case of a ship delivered before 6 July 1993¹⁷ which is for the time being not required¹⁸ to be fitted and is not in fact fitted with the required equipment¹⁹ the above provisions²⁰ do not apply until 6 July 1998 or the date on which the vessel is so fitted, whichever is earlier²¹. Even so, until that date (that is to say, the earlier of those two dates) the ship must not discharge oil or oily mixture into the sea unless all the following conditions are satisfied:

- 626 (A) the ship is not within a special area;
- 627 (B) the ship is more than 12 miles²² from the nearest land²³;
- 628 (C) the ship is proceeding on a voyage;
- 629 (D) the oil content of the effluent is less than 100 ppm; and
- 630 (E) the ship has in operation approved²⁴ oily water separating equipment²⁵ of a design which is approved in accordance with the specification set out in the Recommendations on International Performance and Test Specifications for Oily Water Separating Equipment and Oil Content Meters²⁶.

No discharge into the sea must contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or contain chemicals or other

substances introduced for the purpose of circumventing the conditions of discharge prescribed by these provisions²⁷.

In so far as any oil or oily mixture has not been unloaded as cargo and may not be discharged into the sea²⁸, it must be retained on board and discharged into reception facilities²⁹.

The above provisions³⁰ do not apply to a discharge from an offshore installation³¹ which occurs landward of the line which for the time being is the baseline for measuring the breadth of the territorial waters of the United Kingdom³².

1 le subject to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 11-11B: see PARA 374.

2 As to the meaning of 'United Kingdom ship' see PARA 365 note 2.

3 As to the meaning of 'oil tanker' see PARA 365 note 13.

4 As to the meaning of 'discharge' see PARA 366 note 3.

5 As to the meaning of 'oil' see PARA 365 note 8.

6 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(1)(a) (reg 12(1) amended by SI 2009/1210).

7 le subject to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 38: see PARA 402.

8 As to the meaning of 'ship' see PARA 365 note 2.

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(1)(b).

10 As to the meaning of 'oily mixture' see PARA 373 note 14.

11 As to the meaning of 'sea' see PARA 366 note 3.

12 For these purposes, 'special area' means a sea area where, for recognised technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic, the adoption of special mandatory methods for the prevention of sea pollution by oil is required, and includes those areas listed in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16: reg 1(2). The areas so listed in reg 16 are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the North West European waters area and the Antarctic area, defined as follows: (1) 'Mediterranean Sea area' means the Mediterranean Sea including the gulfs and seas therein with the boundary between the Mediterranean and the Black Sea constituted by the 41°N parallel and bounded to the west by the Straits of Gibraltar at the meridian of 5°36'W; (2) 'Baltic Sea area' means the Baltic Sea with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel to the Skaw in the Skagerrak at 57°44.8'N; (3) 'Black Sea area' means the Black Sea with the boundary between the Mediterranean and the Black Sea constituted by the parallel 41°N; (4) 'North West European waters area' means the North Sea and its approaches, the Irish Sea and its approaches, the Celtic Sea, the English Channel and its approaches and part of the North East Atlantic immediately to the west of Ireland, being the area bounded by lines joining the following points: (a) 48° 27'N on the French coast; (b) 48° 27'N; 6° 25'W; (c) 49° 52'N; 7° 44'W; (d) 50° 30'N; 12°W; (e) 56° 30'N; 12°W; (f) 62°N; 3°W; (g) 62°N on the Norwegian coast; (h) 57° 44.8'N on the Danish and Swedish coasts; (5) 'Antarctic area' means the sea area south of 60° south latitude, and any designated by the Secretary of State in a Merchant Shipping Notice following a Resolution of the Marine Environment Protection Committee of the International Maritime Organisation: reg 16(1) (amended by SI 2000/483). As to the Secretary of State see PARA 58. As to the meaning of 'Merchant Shipping Notice' see PARA 367 note 6. As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13.

13 As to the meaning of 'ppm' see PARA 373 note 9.

14 le required by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14: see PARA 377.

15 For these purposes, 'filtering equipment' means filters or any combination of separators and filters which are designed to produce effluent containing not more than 15 ppm of oil: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

- 16 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(2).
- 17 Ie a ship referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(7): see PARA 377.
- 18 Ie by virtue of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14: see PARA 377.
- 19 Ie the equipment required by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(1), (2) or (3): see PARA 377.
- 20 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(2).
- 21 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(3).
- 22 For these purposes, 'mile' means an international nautical mile, ie a distance of 1,852 metres: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).
- 23 For these purposes, 'from the nearest land' (1) in relation to all land other than the part of Australia specified in head (2) below, means from the nearest baseline from which the territorial sea of any territory is established in accordance with the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 10); and (2) in relation to the part of the north-eastern coast of Australia which lies between the points 11°00'S, 142°08'E and 24°42'S, 153°15'E, means from the nearest of the straight lines joining consecutively the following points: 11°00'S, 142°08'E; 10°35'S, 141°55'E; 10°00'S, 142°00'E; 9°10'S, 143°52'E; 9°00'S, 144°30'E; 13°00'S, 144°00'E; 15°00'S, 146°00'E; 18°00'S, 147°00'E; 21°00'S, 153°00'E and 24°42'S, 153°15'E: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).
- 24 As to the meaning of 'approved' see PARA 374 note 7.
- 25 For these purposes, 'separating equipment' means either separators or filters, or any combination of them, which are designed to produce effluent containing not more than 100 ppm of oil: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).
- 26 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(3). For these purposes, 'Recommendations on International Performance and Test Specifications for Oily Water Separating Equipment and Oil Content Meters' means Resolution A393(XI) of that title adopted by the International Maritime Organisation as modified by the Marine Environment Protection Committee's Resolution 60(33) contained in the 1987 Edition of Oily Water Separators and Monitoring Equipment published by that Organisation: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).
- 27 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(4).
- 28 Ie in compliance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(2) or (3).
- 29 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(5).
- 30 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(2), (3).
- 31 For these purposes, 'offshore installation' means any mobile or fixed drilling or production platform or any other platform used in connection with the exploration, exploitation or associated offshore processing of sea bed mineral resources: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2) (definition added by SI 2009/1210).
- 32 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(7) (substituted by SI 2009/1210). As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

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376. Oil tankers.

The following provisions apply¹ to every United Kingdom oil tanker²; and they also apply³ to every other oil tanker wherever it may be⁴.

An oil tanker to which these provisions apply must not discharge⁵ any oil⁶ or oily mixture⁷ into any part of the sea⁸ unless all the following conditions are satisfied:

- 631 (1) the tanker is proceeding on a voyage;
- 632 (2) the tanker is not within a special area⁹;
- 633 (3) the tanker is more than 50 miles¹⁰ from the nearest land¹¹;
- 634 (4) the instantaneous rate of discharge of oil content¹² does not exceed 30 litres per mile;
- 635 (5) the total quantity of oil discharged into the sea does not exceed one thirty-thousandth of the total quantity of the particular cargo of which the residue formed a part, or, in the case of existing tankers¹³, the total quantity of oil discharged does not exceed one fifteen-thousandth of the total quantity of the particular cargo of which the residue formed a part; and
- 636 (6) the tanker has in operation¹⁴ an oil discharge monitoring and control system and a slop tank arrangement¹⁵.

The above provisions¹⁶ do not apply to the discharge of clean¹⁷ or segregated¹⁸ ballast or unprocessed oily mixture which without dilution has an oil content not exceeding 15 ppm¹⁹ and which does not originate from cargo pump room bilges and is not mixed with oil cargo residues²⁰.

No discharge into the sea must contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or contain chemicals or other substances introduced for the purposes of circumventing the conditions of discharge prescribed by these provisions²¹.

In so far as any oil or oily mixture has not been unloaded as cargo and may not be discharged into the sea²², it must be retained on board and must be discharged into reception facilities²³.

¹ Ie subject to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 11-11B: see PARA 374.

² As to the meaning of 'oil tanker' see PARA 365 note 13.

³ Ie subject to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 38: see PARA 402.

⁴ Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13(1) (amended by SI 2009/1210).

⁵ As to the meaning of 'discharge' see PARA 366 note 3.

⁶ As to the meaning of 'oil' see PARA 365 note 8.

⁷ Ie except those for which provision is made in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12: see PARA 375. As to the meaning of 'oily mixture' see PARA 373 note 14.

- 8 As to the meaning of 'sea' see PARA 366 note 3.
- 9 As to the meaning of 'special area' see PARA 375 note 12.
- 10 As to the meaning of 'mile' see PARA 375 note 22.
- 11 As to the meaning of 'nearest land' see PARA 375 note 23.
- 12 For these purposes, 'instantaneous rate of discharge of oil content' means the rate of discharge of oil in litres per hour at any instant divided by the speed of the ship in knots at the same instant: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).
- 13 For these purposes, 'existing ship' means, without prejudice to Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 17(2) (see PARA 381 note 1), a ship which is not a new ship: reg 1(2). 'New ship' means, except as provided in reg 17(1) (see PARA 380 note 1), a ship: (1) for which the building contract was placed after 31 December 1975; or (2) in the absence of a building contract, the construction work of which was begun after 30 June 1976; or (3) the delivery of which is after 31 December 1979; or (4) which has undergone a major conversion for which the contract was placed after 31 December 1975 or, in the absence of a contract, the construction work of which was begun after 30 June 1976 or which is or was completed after 31 December 1979: reg 1(2).
- 14 Ie as required by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15: see PARA 378.
- 15 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13(2). As to the meaning of 'slop tank' see PARA 373 note 12; and as to the meaning of 'tank' see PARA 373 note 6.
- 16 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13(2).
- 17 As to the meaning of 'clean ballast' see PARA 373 note 9.
- 18 As to the meaning of 'segregated ballast' see PARA 373 note 11.
- 19 As to the meaning of 'ppm' see PARA 373 note 9.
- 20 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13(3).
- 21 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13(4).
- 22 Ie in compliance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13(2).
- 23 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13(5).

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377. Oil filtering equipment and oil discharge monitoring and control system.

Every ship¹ of 400 GT² and above but less than 10,000 GT must be fitted with oil filtering equipment³; and any such ship which carries ballast water in its bunker fuel tanks:

- 637 (1) in addition, must be provided with an alarm device and the means for automatically stopping any discharge⁴ of oily mixture⁵ when the oil content in the effluent exceeds 15 ppm⁶ complying with the prescribed specifications⁷ and must not discharge such ballast water into the sea⁸ unless using that equipment and a record of any such discharge must be made in the Oil Record Book⁹; or
- 638 (2) must discharge the ballast water to reception facilities¹⁰.

Every ship which is of 10,000 GT and above must be provided with:

- 639 (a) oil filtering equipment¹¹; and
- 640 (b) oil content measuring equipment fitted with a 15 ppm alarm device and with arrangements for automatically stopping any discharge of oily mixture when the oil content in the effluent exceeds 15 ppm¹².

The Secretary of State may waive the above requirements¹³ if a ship is engaged exclusively on voyages within special areas¹⁴ and:

- 641 (i) it is fitted with a holding tank having a volume adequate for the retention on board of all oily bilge water;
- 642 (ii) all oily bilge water is retained on board for subsequent discharge to reception facilities;
- 643 (iii) adequate reception facilities are available to receive such oily bilge water in a sufficient number of ports or terminals that the ship calls at;
- 644 (iv) the IOPP Certificate¹⁵, when required, is indorsed to the effect that the ship is exclusively engaged on voyages within special areas; and
- 645 (v) the relevant entries are recorded in the Oil Record Book¹⁶.

Every ship which is of less than 400 GT must, so far as reasonably practicable, be constructed to ensure that oil or oily mixtures are retained on board and discharged to reception facilities or, if oil or oily mixtures are to be discharged into the sea, are so discharged in accordance with the prescribed¹⁷ requirements¹⁸.

Oil filtering equipment must be of an approved¹⁹ design in accordance with the specification for such equipment set out in the Recommendations on International Performance and Test Specifications for Oily Water Separating Equipment and Oil Content Meters²⁰.

Oil content measuring equipment and alarm device must be of an approved design in accordance with the specification for such equipment set out in the Recommendations on International Performance and Test Specifications for Oily Water Separating Equipment and Oil

Content Meters, and the arrangements for automatically stopping any discharge must be of an approved design²¹.

A ship delivered before 6 July 1993 need not comply with the above requirements before 6 July 1998; but, if the ship does not so comply before that date, it must be fitted with oily water separating equipment²² which is such as to ensure that any oily mixture discharged into the sea after passing through the equipment has an oil content not exceeding 100 ppm²³.

1 As to the meaning of 'ship' see PARA 365 note 2.

2 As to the meaning of 'GT' see PARA 367 note 2.

3 Ie complying with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(5): see the text and notes 19, 20. As to the meaning of 'filtering equipment' see PARA 375 note 15; and as to the meaning of 'oil' see PARA 365 note 8.

4 As to the meaning of 'discharge' see PARA 366 note 3.

5 As to the meaning of 'oily mixture' see PARA 373 note 14.

6 As to the meaning of 'ppm' see PARA 373 note 9.

7 Ie the specifications referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(6): see the text and note 21.

8 As to the meaning of 'sea' see PARA 366 note 3.

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(1)(a). As to the Oil Record Book see PARA 373.

10 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(1)(b).

11 See note 3.

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(2) (amended by SI 1997/1910). This provision is subject to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(3), (6): see reg 14(2) (as so amended).

13 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(1), (2).

14 As to the meaning of 'special area' see PARA 375 note 12.

15 As to the meaning of 'IOPP Certificate' see PARA 367 note 4.

16 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(3). As to the Secretary of State see PARA 58.

17 Ie the requirements prescribed by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12(2): see PARA 375.

18 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(4).

19 As to the meaning of 'approved' see PARA 374 note 7.

20 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(5). As to the meaning of 'Recommendations on International Performance and Test Specifications for Oily Water Separating Equipment and Oil Content Meters' see PARA 375 note 26.

21 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(6).

22 As to the meaning of 'separating equipment' see PARA 375 note 25.

23 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(7).

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378. Retention of oil on board.

Oil tankers¹ of 150 GT² and above must comply with the following requirements³.

Adequate means must be provided for cleaning the cargo tanks and transferring the dirty ballast residues and tank washings from the cargo tanks into a slop tank⁴. In existing oil tankers⁵, any cargo tank may be designated as a slop tank⁶. Arrangements must be provided to transfer the oil waste into a slop tank or combination of slop tanks in such a way that any effluent discharges⁷ into the sea⁸ will be such as to comply with the provisions⁹ relating to oil tankers¹⁰. The slop tank or combination of slop tanks provided must have sufficient capacity to retain the slops generated by tank washings, oil residues and dirty ballast residues; and that capacity must be not less than 3 per cent of the cargo oil carrying capacity of the ship unless:

- 646 (1) segregated ballast¹¹ tanks or dedicated clean ballast¹² tanks are provided¹³, or a cargo tank cleaning system using crude oil washing¹⁴; in that event the total capacity of the slop tank or tanks may be reduced to 2 per cent of the oil carrying capacity of the ship;
- 647 (2) in the case of combination carriers¹⁵, the oil cargo is carried in tanks with smooth walls, when such total capacity may be reduced to 1% of the oil carrying capacity of the ship¹⁶.

Where, however, the tank washing arrangements are such that, once the slop tank or tanks is or are charged with washing water, this water is sufficient for the tank washing and, where applicable, for providing the driving fluid for the pumps (including eductors) without the introduction of additional water into the system, the above figures of 3 per cent, 2 per cent and 1 per cent may be reduced to 2 per cent, 1.5 per cent and 0.8 per cent respectively¹⁷. Slop tanks must be so designed, particularly as regards the position of inlets, outlets, baffles or weirs (where fitted), as to avoid excessive turbulence and entrainment of oil or emulsion with water¹⁸. New oil tankers of 70,000 tons deadweight¹⁹ and above must be provided with at least two slop tanks²⁰.

An oil discharge monitoring and control system of an approved²¹ design must be fitted²². It must be designed and installed in accordance with the Guidelines and Specifications for Oil Discharge and Control Systems for Oil Tankers²³. Any such system must be fitted with a recording device to provide, unless otherwise required by those Guidelines and Specifications, a continuous record of the discharge of oil in litres per mile²⁴ and the total quantity of oil discharged or, in lieu of the total quantity of oil discharged, the oil content and rate of discharge of the effluent; the record must be identifiable as to the time and date and be kept for at least three years²⁵. The system must be brought into operation when there is a discharge of effluent into the sea and must be such as to ensure that any discharge of oily mixture is, unless otherwise permitted by those Guidelines and Specifications, automatically stopped when the instantaneous rate of discharge of oil exceeds 30 litres per mile²⁶. On any failure of the system the discharge must be stopped and the failure noted in the Oil Record Book²⁷. A manually operated alternative system must be provided and may be used in the event of such a failure, but the defective unit must be made operable as soon as possible; if a tanker with a defective unit is within the United Kingdom or the territorial waters thereof, the Secretary of State may allow the tanker to undertake one ballast voyage before proceeding to a repair

port²⁸. Effective oil/water interface detectors, of a design approved in accordance with the Specifications for Oil/Water Interface Detectors²⁹, must be provided for the rapid and accurate determination of the oil/water interface in slop tanks and in other tanks where the separation of oil and water is effected and from which it is intended to discharge effluent direct to the sea³⁰. Approved instruction manuals on the operation and maintenance of the various components comprising the oil discharge monitoring and control system must be provided³¹. These manuals must contain information on manual as well as automatic operation and must be so drawn up as to ensure that at no time will oil be discharged except in compliance with the specified conditions³².

Oil tankers of less than 150 GT³³ must retain oil and all contaminated washings on board for subsequent discharge to reception facilities³⁴. The total quantity of oil and water used for washing and returned to a storage or slop tank must be recorded in the Oil Record Book³⁴. This total quantity must be discharged to reception facilities unless adequate arrangements are made to ensure that any effluent which is discharged into the sea is effectively monitored to ensure that the relevant provisions³⁵ are complied with³⁶.

The above provisions³⁷ do not apply to any oil tanker which is engaged exclusively on voyages of 72 hours or less in duration and within 50 miles of the nearest land, provided that:

- 648 (a) the oil tanker is engaged exclusively in trade between ports or terminals within the United Kingdom;
- 649 (b) the oil tanker retains on board all oily mixtures for subsequent discharge to reception facilities;
- 650 (c) the Secretary of State has determined that adequate facilities are available to receive such oily mixtures³⁸.

Nor do the above provisions³⁹ apply to oil tankers carrying asphalt or other products⁴⁰ which, through their physical properties, inhibit effective product/water separation and monitoring⁴¹.

1 As to the meaning of 'oil tanker' see PARA 365 note 13.

2 As to the meaning of 'GT' see PARA 367 note 2.

3 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(1).

4 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(2)(a). As to the meaning of 'slop tank' see PARA 373 note 12.

5 As to the meaning of 'existing ship' see PARA 376 note 13.

6 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(2)(a).

7 As to the meaning of 'discharge' see PARA 366 note 3.

8 As to the meaning of 'sea' see PARA 366 note 3.

9 I.e. the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13: see PARA 376.

10 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(2)(b).

11 As to the meaning of 'segregated ballast' see PARA 373 note 11.

12 As to the meaning of 'clean ballast' see PARA 373 note 9.

13 I.e. in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18: see PARA 380.

14 le in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21: see PARA 386.

15 As to the meaning of 'combination carrier' see PARA 365 note 13.

16 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(2)(c).

17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(2)(c) proviso.

18 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(2)(d).

19 For these purposes, 'deadweight' (DW) means the difference in metric tons between the displacement of a ship in water of a specific gravity of 1.025 at the load waterline corresponding to the assigned summer freeboard and the lightweight of the ship: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

20 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(2)(e).

21 As to the meaning of 'approved' see PARA 374 note 7.

22 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(3)(a).

23 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(3)(a). For these purposes, 'Guidelines and Specifications for Oil Discharge and Control Systems for Oil Tankers' means Resolution A496(XII) adopted by the International Maritime Organisation and contained in the 1987 Edition of Oily Water Separators and Monitoring Equipment, published by that Organisation: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13.

The requirements of reg 15(3) do not apply to any oil tanker where (1) the tanker is an existing oil tanker of 40,000 tons deadweight or above, engaged in specific trades, in accordance with reg 22(1) (see PARA 387) and complying with the conditions specified in reg 22(2) (see PARA 387); or (2) subject to head (3) below, the tanker is engaged exclusively on voyages (a) within special areas; or (b) within 50 miles from the nearest land outside special areas and trading between ports and terminals within the United Kingdom or on restricted voyages of 72 hours or less in duration; (3) tankers to which head (2) above applies must comply with the following requirements (a) all oily mixtures are retained on board for subsequent discharge to reception facilities; (b) for voyages specified in head (2)(b) above adequate reception facilities are available to receive such oily mixtures in those oil loading ports or terminals the tanker calls at; (c) the IOPP or UKOPP Certificate is indorsed to the effect that the ship is exclusively engaged in one or more of the categories of voyages specified in heads (2)(a) and (2)(b) above; and (d) the relevant entries are recorded in the Oil Record Book: reg 15(5)(b). As to the meaning of 'nearest land' see PARA 375 note 23; as to the meaning of 'oily mixture' see PARA 373 note 14; as to the meaning of 'IOPP Certificate' see PARA 367 note 4; and as to the meaning of 'UKOPP Certificate' see PARA 367 note 5. As to the Oil Record Book see PARA 373.

24 As to the meaning of 'mile' see PARA 375 note 22.

25 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(3)(b).

26 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(3)(c). See also note 23.

27 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(3)(d). See also note 23.

28 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(3)(d). See also note 23.

29 For these purposes, 'Specifications for Oil/Water Interface Detectors' means the International Maritime Organisation's Resolution MEPC 5(XIII), contained in the 1987 Edition of Oily Water Separators and Monitoring Equipment, published by that Organisation: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

30 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(3)(e). See also note 23.

31 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(3)(f). See also note 23.

32 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(3)(f). The conditions so specified are those in reg 13 (see PARA 376): reg 15(3)(f). See also note 23.

33 le pursuant to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13.

34 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(4).

35 le the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13.

36 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(4).

37 le the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(1)-(3).

38 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(5)(a).

39 See note 37.

40 le subject to the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996: see PARA 365 et seq and PARA 379 et seq.

41 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(6).

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379. Methods for the prevention of oil pollution from ships operating in special areas.

There are prohibited¹:

651 (1) in the Antarctic area², any discharge³ into the sea⁴ from any United Kingdom ship⁵ of oil⁶ or oily mixture⁷; and

652 (2) in every special area⁸ other than the Antarctic area:

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22. (a) any discharge into the sea of oil or oily mixture from any United Kingdom oil tanker⁹ or from any United Kingdom ship of 400 GT¹⁰ or above other than an oil tanker; and

23. (b) any discharge into the sea of oil or oily mixture from a United Kingdom ship of less than 400 GT other than an oil tanker, except when the oil content of the effluent without dilution does not exceed 15 ppm¹¹;

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but the above provisions do not apply to the discharge of clean¹² or segregated¹³ ballast¹⁴.

The provisions of head (1) above do not apply to the discharge of processed bilge water from machinery spaces, provided that all the following conditions are satisfied:

653 (i) the bilge water does not originate from cargo pump room bilges;

654 (ii) the bilge water is not mixed with cargo oil residues;

655 (iii) the ship is proceeding on a voyage;

656 (iv) the oil content of the effluent, without dilution, does not exceed 15 ppm of mixture;

657 (v) the ship has in operation an oil filtering system¹⁵ and equipment¹⁶;

658 (vi) the oil filtering system is equipped with a stopping device which will ensure that the discharge is automatically stopped if the oil content of the effluent exceeds 15 ppm parts of the mixture¹⁷.

No discharge into the sea must contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or contain chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in these provisions¹⁸.

Where residues of oil or oily mixture may not be discharged into the sea¹⁹, they must be retained on board and must only be discharged into reception facilities²⁰.

Nothing in these provisions prohibits a ship on a voyage only part of which is in a special area from discharging²¹ outside the special area²².

A United Kingdom ship must not enter the Antarctic area unless:

- 659 (A) it is fitted with a tank or tanks of sufficient capacity for the retention on board of all sludge, dirty ballast, tank washing water and other oily residues and mixtures while operating in the area; and
- 660 (B) it has concluded arrangements to have such oily residues and mixtures discharged into a reception facility after it has left the area²³.

The above provisions²⁴ apply²⁵ to ships which are not United Kingdom ships as they apply to United Kingdom ships²⁶.

1 le subject to the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 11-11B (see PARA 374) and reg 16(3) (see the text and notes 12-17).

2 As to the meaning of 'Antarctic area' see PARA 375 note 12.

3 As to the meaning of 'discharge' see PARA 366 note 3.

4 As to the meaning of 'sea' see PARA 366 note 3.

5 As to the meaning of 'United Kingdom ship' see PARA 365 note 2.

6 As to the meaning of 'oil' see PARA 365 note 8.

7 As to the meaning of 'oily mixture' see PARA 373 note 14.

8 As to the meaning of 'special area' see PARA 375 note 12.

9 As to the meaning of 'oil tanker' see PARA 365 note 13.

10 As to the meaning of 'GT' see PARA 367 note 2.

11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16(2) (amended by SI 2009/1210). As to the meaning of 'ppm' see PARA 373 note 9.

12 As to the meaning of 'clean ballast' see PARA 373 note 9.

13 As to the meaning of 'segregated ballast' see PARA 373 note 11.

14 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16(3)(a).

15 le complying with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(5): see PARA 377.

16 le complying with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(6): see PARA 377.

17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16(3)(b).

18 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16(4)(a).

19 le in compliance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16(2), (3).

20 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16(4)(b).

21 le in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12 (see PARA 375) and reg 13 (see PARA 376).

22 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16(5).

23 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16(6).

24 le the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16 other than reg 16(6).

25 le subject to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 38:
see PARA 402.

26 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16(7).

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D. SEGREGATION OF CARGO

380. New tankers of 20,000 tons deadweight and above.

Every new crude oil tanker¹ of 20,000 tons deadweight and above and every new product carrier² of 30,000 tons deadweight and above must be provided with segregated ballast³ tanks and must comply with the following⁴ provisions⁵.

The capacity of the segregated ballast tanks must be such that the ship⁶ can operate safely on ballast voyages without recourse to the use of cargo tanks for water ballast except as provided for in the following provisions⁷, provided that the capacity of the segregated ballast tanks are at least such that, in any ballast condition at any part of the voyage, including the condition consisting of lightweight⁸ plus segregated ballast only, the ship's draughts and trim can meet each of the following requirements:

- 661 (1) the moulded draught amidships⁹ (dm) in metres (without taking into account any ship's deformation) must not be less than $2.0 + 0.02L$;
- 662 (2) the draughts at the forward and after perpendiculars¹⁰ must correspond to those determined by the draught amidships (dm) as specified in head (1) above, in association with the trim by the stern of not greater than 0.015L; and
- 663 (3) in any case the draught at the after perpendicular must not be less than that which is necessary to obtain full immersion of the propeller¹¹.

In no case must ballast water be carried in cargo tanks, except:

- 664 (a) on those voyages when weather conditions are so severe that, in the opinion of the master, it is necessary to carry additional ballast water in cargo tanks for the safety of the ship;
- 665 (b) where the particular character of the operation of an oil tanker renders it necessary to carry ballast water in excess of the quantity which may be carried in segregated ballast tanks¹², provided that the Maritime and Coastguard Agency¹³ has approved that method of operation¹⁴.

Any such additional ballast water must be processed and discharged in accordance with the specified requirements¹⁵ and an entry of the discharge must be made in the Oil Record Book¹⁶.

In the case of new crude oil tankers, the additional ballast so permitted¹⁷ must be carried only in cargo tanks that have been crude oil washed¹⁸ before departure from an oil unloading port or terminal¹⁹.

Notwithstanding the above provisions²⁰ the capacity of the segregated ballast tanks for new oil tankers less than 150 metres in length²¹ must be as may be determined by the Secretary of State²².

Every new crude oil tanker of 20,000 tons deadweight and above must be fitted with a cargo tank cleaning system using crude oil washing²³. This system must fully comply with the specified requirements²⁴ within one year after the tanker is first engaged in the trade of carrying crude oil or by the end of the third voyage carrying crude oil suitable for crude oil

washing, whichever occurs later²⁵. Unless an oil tanker carries crude oil which is not suitable for crude oil washing, it must operate the system in accordance with the specified²⁶ requirements²⁷.

1 For these purposes, and notwithstanding the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2) (see PARA 376 note 13), a 'new oil tanker' means an oil tanker (1) for which the building contract was placed after 1 June 1979; or (2) in the absence of a building contract, the keel of which was laid, or which was at a similar stage of construction, after 1 January 1980; or (3) the delivery of which was after 1 June 1982; or (4) which has undergone a major conversion: (a) for which the contract was placed after 1 June 1979; or (b) in the absence of a contract, the construction work of which was begun after 1 January 1980; or (c) which was completed after 1 June 1982; except that, for oil tankers of 70,000 tons deadweight and above, the definitions in reg 1(2) apply for the purposes of reg 18(1): reg 17(1). As to the meaning of 'deadweight' see PARA 378 note 19.

'Crude oil tanker' means an oil tanker engaged in the trade of carrying crude oil: reg 1(2). 'Major conversion' means a conversion of an existing ship: (i) which substantially alters the dimensions or carrying capacity of the ship; or (ii) which changes the type of the ship; or (iii) the intent of which, in the opinion of the Secretary of State, is substantially to prolong its life; or (iv) which otherwise so alters the ship that, if it were a new ship, it would become subject to relevant provisions of the Protocol (London, 1 June 1978 to 31 May 1979; Misc 27 (1978); Cmnd 7347) not applicable to it as an existing ship; but conversion of an existing oil tanker of 20,000 tons deadweight and above to meet the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18 or an existing oil tanker to meet the requirements of reg 31 (see PARA 395) is not deemed to constitute major conversion: reg 1(2). As to the meaning of 'crude oil' see PARA 365 note 8; and as to the meaning of 'existing ship' see PARA 376 note 13. As to the Secretary of State see PARA 58.

2 For these purposes, 'product carrier' means an oil tanker engaged in the trade of carrying oil other than crude oil: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

3 As to the meaning of 'segregated ballast' see PARA 373 note 11.

4 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(2)-(4), and reg 18(5), if appropriate.

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(1).

6 As to the meaning of 'ship' see PARA 365 note 2.

7 Ie except as provided by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(3) or (4).

8 For these purposes, 'lightweight' means the displacement of a ship in metric tons without cargo, fuel, lubricating oil, ballast water, fresh water and feed water in tanks, consumable stores, and passengers and crew and their effects: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

9 For these purposes, 'amidships' means at the middle of the length: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). As to the meaning of 'length' see note 21.

10 For these purposes, 'forward and after perpendiculars' is to be taken at the forward and after ends of the length (L); the forward perpendicular must coincide with the foreside of the stem on the waterline on which the length is measured: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(2).

12 Ie under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(2).

13 As to the meaning of 'Maritime and Coastguard Agency' see PARA 367 note 6.

14 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(3) (amended by SI 2004/303).

15 Ie in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13 (see PARA 376) and reg 15 (see PARA 378).

16 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(3).

17 Ie by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(3).

18 le in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21: see PARA 386.

19 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(4).

20 le the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(2).

21 For these purposes, 'length' (L) means 96% of the total length on a waterline at 85% of the least moulded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater; in ships designed with a rake of keel the waterline on which this length is measured must be parallel to the designed waterline; the length (L) must be measured in metres: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

22 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(5).

23 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(6).

24 le the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21: see PARA 386.

25 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(6).

26 le the requirements specified in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21.

27 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(6).

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381. Existing crude oil tankers of 40,000 tons deadweight and above.

Every existing crude oil tanker¹ of 40,000 tons deadweight² and above must³ be provided with segregated ballast⁴ tanks and must comply with the prescribed requirements⁵.

Existing crude oil tankers of 40,000 tons deadweight and above may⁶, in lieu of being provided with segregated ballast tanks, operate with a cargo tank cleaning procedure using crude oil washing⁷ unless the crude oil tanker is intended to carry crude oil which is not suitable for crude oil washing⁸.

1 For these purposes, 'existing oil tanker' means an oil tanker which is not a new oil tanker as defined in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 17(1) (see PARA 380 note 1): reg 17(2). As to the meaning of 'crude oil tanker' see PARA 380 note 1; and as to the meaning of 'crude oil' see PARA 365 note 8.

2 As to the meaning of 'deadweight' see PARA 378 note 19.

3 le subject to the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(8) (see the text and notes 6-8) and reg 18(9) (see PARA 382) and to the provisions of reg 22 (see PARA 387) and reg 23 (see PARA 388).

4 As to the meaning of 'segregated ballast' see PARA 373 note 11.

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(7). The requirements so prescribed are those of reg 18(2), (3) (see PARA 380): reg 18(7).

6 le subject to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 22, 23: see PARAS 387, 388.

7 le in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21: see PARA 386.

8 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(8).

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382. Existing product carriers of 40,000 tons deadweight and above.

Every existing product carrier¹ of 40,000 tons deadweight² and above must³ be provided with segregated ballast⁴ tanks and must comply with the specified requirements⁵ or, alternatively, operate⁶ with dedicated clean ballast⁷ tanks⁸.

1 As to the meaning of 'product carrier' see PARA 380 note 2.

2 As to the meaning of 'deadweight' see PARA 378 note 19.

3 Ie subject to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 22: see PARA 387.

4 As to the meaning of 'segregated ballast' see PARA 373 note 11.

5 Ie the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(2), (3): see PARA 380.

6 Ie in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 20: see PARA 385.

7 As to the meaning of 'clean ballast' see PARA 373 note 9.

8 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(9).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(3) MERCHANT SHIPPING ACT 1995/(ii) Prevention of Oil Pollution/D. SEGREGATION OF CARGO/383. Oil tankers described in the IOPP or UKOPP certificate as segregated ballast oil tankers.

383. Oil tankers described in the IOPP or UKOPP certificate as segregated ballast oil tankers.

Any oil tanker¹ which is not required to be provided with segregated ballast tanks² may be described in the IOPP³ or UKOPP⁴ Certificate as a segregated ballast tanker if it complies with the specified requirements⁵.

1 As to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.

2 In accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(1) (see PARA 380), reg 18(7) (see PARA 381) or reg 18(9) (see PARA 382). As to the meaning of 'segregated ballast' see PARA 373 note 11.

3 As to the meaning of 'IOPP Certificate' see PARA 367 note 4.

4 As to the meaning of 'UKOPP Certificate' see PARA 367 note 5.

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(10). The requirements so specified are reg 18(2), (3) (see PARA 380) or reg 18(5) (see PARA 380), if appropriate: reg 18(10).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(3) MERCHANT SHIPPING ACT 1995/(ii) Prevention of Oil Pollution/D. SEGREGATION OF CARGO/384. Protective location of segregated ballast spaces.

384. Protective location of segregated ballast spaces.

In every new crude oil tanker¹ of 20,000 tons deadweight² and above and every new product carrier³ of 30,000 tons deadweight and above, the segregated ballast⁴ tanks required to provide the capacity to comply with the specified requirements⁵ which are located within the cargo tank length must be arranged⁶ to provide a measure of protection against oil outflow in the event of grounding or collision⁷.

1 As to the meaning of 'new oil tanker' see PARA 380 note 1; as to the meaning of 'crude oil tanker' see PARA 380 note 1; and as to the meaning of 'crude oil' see PARA 365 note 8.

2 As to the meaning of 'deadweight' see PARA 378 note 19.

3 As to the meaning of 'product carrier' see PARA 380 note 2.

4 As to the meaning of 'segregated ballast' see PARA 373 note 11.

5 Ie the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18: see PARAS 380-383.

6 Ie in accordance with the requirements of Merchant Shipping Notice 1643/MARPOL 1 Sch 1. As to the meaning of 'Merchant Shipping Notice' see PARA 367 note 6.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 19.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(3) MERCHANT SHIPPING ACT 1995/(ii) Prevention of Oil Pollution/D. SEGREGATION OF CARGO/385. Requirements for oil tankers with dedicated clean ballast tanks.

385. Requirements for oil tankers with dedicated clean ballast tanks.

An oil tanker¹ operating with dedicated clean ballast tanks² must have adequate tank capacity, dedicated solely to the carriage of clean ballast to meet the specified requirements³ as those requirements apply to segregated ballast tanks⁴.

The arrangements and operational procedures for dedicated clean ballast tanks must comply with the requirements of Specifications for Oil Tankers with Dedicated Clean Ballast Tanks⁵.

An oil tanker operating with dedicated clean ballast tanks must be equipped with an oil content meter approved⁶ in accordance with the specification for such equipment set out in the Recommendations on International Performance and Test Specifications for Oily Water Separating Equipment and Oil Content Meters⁷, so as to permit supervision of the oil content in the ballast water being discharged⁸.

Every oil tanker operating with dedicated clean ballast tanks must be provided with a dedicated Clean Ballast Tank Operation Manual detailing the system and specifying operational procedures⁹. This Manual must be approved by the Maritime and Coastguard Agency¹⁰ and must contain all the information set out in the Specifications referred to above¹¹. If an alteration affecting the dedicated clean ballast tank system is made, the Operation Manual must be revised, and the revision approved by the Maritime and Coastguard Agency¹².

1 As to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.

2 I.e. in accordance with the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(9): see PARA 382. As to the meaning of 'clean ballast' see PARA 373 note 9.

3 I.e. the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(2), (3): see PARA 380.

4 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 20(1). As to the meaning of 'segregated ballast' see PARA 373 note 11.

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 20(2). For these purposes, 'Specifications for Oil Tankers with Dedicated Clean Ballast Tanks' means the International Maritime Organisation's Resolution A495(XII) contained in the 1982 Edition of Dedicated Clean Ballast Tanks, published by that Organisation: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13.

6 As to the meaning of 'approved' see PARA 374 note 7.

7 As to the meaning of 'Recommendations on International Performance and Test Specifications for Oily Water Separating Equipment and Oil Content Meters' see PARA 375 note 26.

8 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 20(3). As to the meaning of 'discharge' see PARA 366 note 3.

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 20(4).

10 As to the meaning of 'Maritime and Coastguard Agency' see PARA 367 note 6.

11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 20(4) (amended by SI 2004/303).

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 20(4) (as amended: see note 11).

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386. Requirements for crude oil washing.

Every crude oil¹ washing system required to be provided² must comply with the requirements of the following provisions³.

The crude oil washing installation and associated equipment and arrangements, including qualification of personnel, must comply with the requirements and specifications set out in Specifications for the Design, Operation and Control of Crude Oil Washing Systems⁴.

With respect to the ballasting of cargo tanks, sufficient cargo tanks must be crude oil washed prior to each ballast voyage to ensure that, taking into account the tanker's trading pattern and expected weather conditions, ballast water will be put only into cargo tanks which have been crude oil washed⁵.

Every oil tanker operating with crude oil washing system must be provided with an Operations and Equipment Manual describing the system and equipment in detail and specifying the operational procedures to be followed⁶. This Manual must be approved by the Maritime and Coastguard Agency⁷ and must contain all the information set out in the Specifications referred to above⁸. If any alteration is made affecting the crude oil washing system, the Operations and Equipment Manual must be revised, and the revision approved by the Maritime and Coastguard Agency⁹.

1 As to the meaning of 'crude oil' see PARA 365 note 8.

2 In accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(6) (see PARA 380) and reg 18(8) (see PARA 381).

3 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21(1).

4 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21(2). For these purposes, 'Specifications for the Design, Operation and Control of Crude Oil Washing Systems' means the International Maritime Organisation's Resolution No A446(XI) as amended by Resolutions A.497(XII) and A.897(21) contained in the 2000 edition contained in the 1983 Edition of Crude Oil Washing Systems, published by that Organisation: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2) (definition substituted by SI 2004/303). As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13.

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21(3).

6 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21(4).

7 As to the meaning of 'Maritime and Coastguard Agency' see PARA 367 note 6.

8 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21(4) (amended by SI 2004/303).

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 21(4) (as amended: see note 8).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(3) MERCHANT SHIPPING ACT 1995/(ii) Prevention of Oil Pollution/D. SEGREGATION OF CARGO/387. Existing oil tankers engaged in specific trades.

387. Existing oil tankers engaged in specific trades.

The provisions relating to existing crude oil tankers of 40,000 tons deadweight and above¹ and existing product carriers of 40,000 tons deadweight and above² do not apply to an existing oil tanker³ engaged solely in specific trades between:

- 666 (1) ports or terminals within a Convention country⁴; or
- 667 (2) ports or terminals between two or more Convention countries, where the voyage is entirely within a special area⁵ or the voyage is entirely within other limits designated by the Secretary of State⁶.

The above provisions apply only when the ports or terminals where the cargo is loaded on such voyages are provided with reception facilities adequate for the reception and treatment of all the ballast and tank washing water from oil tankers using them and all the following conditions are complied with:

- 668 (a) subject to the general exceptions⁷, all ballast water, including clean ballast⁸ water, and tank washing residues must be retained on board until they are transferred to such reception facilities, and the entry relating to the transfer in the Oil Record Book⁹ must be indorsed by a competent authority appointed by the Convention country;
- 669 (b) agreement has been reached between the Secretary of State and the governments of the Convention country or countries referred to in head (1) or (2) above on the use of an existing oil tanker for such a trade;
- 670 (c) the adequacy of reception facilities, in accordance with any regulations relating to reception facilities, at the ports or terminals referred to above, must be approved by the governments of the Convention countries within which those ports or terminals are situated; and
- 671 (d) the IOPP Certificate¹⁰ has been indorsed to the effect that the oil tanker is solely engaged in such specific trade¹¹.

¹ I.e the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(7), (8): see PARA 381.

² I.e the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(9): see PARA 382.

³ As to the meaning of 'existing oil tanker' see PARA 381 note 1; and as to the meaning of 'oil tanker' see PARA 365 note 13.

⁴ As to the meaning of 'Convention country' see PARA 372 note 9.

⁵ I.e as defined in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16(1): see PARA 375 note 12.

⁶ Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 22(1). Regulation 22(1) is subject to reg 22(2) (see the text and notes 7-11): reg 22(1). As to the Secretary of State see PARA 58.

⁷ I.e the exceptions provided for in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 11-11B: see PARA 374.

8 As to the meaning of 'clean ballast' see PARA 373 note 9.

9 Ie the Oil Record Book referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 10: see PARA 373.

10 As to the meaning of 'IOPP Certificate' see PARA 367 note 4.

11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 22(2) (amended by SI 2009/1210).

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388. Existing oil tankers having special ballast arrangements.

Where an existing oil tanker¹ of 40,000 tons deadweight² and above is so constructed or operates in such a manner that it complies at all times with the draught and trim requirements³ without recourse to the use of ballast water, it is deemed to comply with the segregated ballast tank requirements⁴, provided that all the following conditions are complied with:

- 672 (1) the operational procedures and ballast arrangements have been approved;
- 673 (2) when the draught and trim requirements are achieved through an operational procedure, agreement as to the use of that procedure has been reached between the Secretary of State and the governments of the Convention countries⁵ concerned;
- 674 (3) the IOPP Certificate⁶ has been indorsed to the effect that the oil tanker is operating with special ballast arrangements⁷.

In no case must ballast be carried in cargo oil tanks except on those voyages when weather conditions are so severe that, in the opinion of the master, it is necessary to carry additional ballast water in cargo tanks for the safety of the ship⁸. Such additional ballast water must be duly discharged⁹ and the discharge of such water must be entered in the Oil Record Book¹⁰.

1 As to the meaning of 'existing oil tanker' see PARA 381 note 1.

2 As to the meaning of 'deadweight' see PARA 378 note 19.

3 Ie the requirements set out in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(2): see PARA 380.

4 Ie the requirements referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18(7): see PARA 381.

5 As to the meaning of 'Convention country' see PARA 373 note 9.

6 As to the meaning of 'IOPP Certificate' see PARA 367 note 4.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 23(1). As to the Secretary of State see PARA 58.

8 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 23(2).

9 Ie in compliance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13 (see PARA 376) and reg 15 (see PARA 378).

10 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 23(2). As to the Oil Record Book see PARA 373.

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389. Segregation of oil and water ballast and carriage of oil in forepeak tanks.

In new ships¹ of 4,000 GT² and above other than oil tankers³, and in new oil tankers⁴ of 150 GT and above, no ballast water must be carried in any oil fuel⁵ tank⁶. Where abnormal conditions or the need to carry large quantities of oil fuel render it necessary for such ships to carry ballast water which is not clean ballast⁷ water in any oil fuel tank, such ballast water must be discharged to reception facilities or into the sea⁸ using the specified equipment⁹, and the discharge must be entered in the Oil Record Book¹⁰.

All other ships must comply with the above requirements¹¹ so far as it is reasonable and practicable to do so¹².

In a ship of 400 GT and above for which the building contract is placed after 1 January 1982 or, in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction after 1 July 1982, oil must not be carried in a forepeak tank or a tank forward of the collision bulkhead¹³.

1 As to the meaning of 'new ship' see PARA 376 note 13.

2 As to the meaning of 'GT' see PARA 367 note 2.

3 As to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.

4 As to the meaning of 'new oil tanker' see PARA 380 note 1.

5 As to the meaning of 'oil fuel' see PARA 373 note 7.

6 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 24(1).

7 As to the meaning of 'clean ballast' see PARA 373 note 9.

8 Ie in compliance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12: see PARA 375. As to the meaning of 'sea' see PARA 366 note 3.

9 Ie the equipment specified in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14(2): see PARA 377.

10 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 24(2). As to the Oil Record Book see PARA 373.

11 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 24(1).

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 24(3).

13 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 24(4). All ships, other than those subject to reg 24(4), must comply with the provisions of reg 24(4), so far as it is reasonable and practicable to do so: reg 24(5).

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390. Tanks for oil residue (sludge).

Every ship¹ of 400 GT² and above must be provided with a tank³ or tanks of adequate capacity, having regard to the type of machinery installed and length of voyage, to receive any oily residues (sludges) which cannot be duly dealt with⁴, such as those resulting from the purification of fuel and lubricating oils and oil leakages in the machinery spaces⁵.

In new ships⁶, such tanks must be designed and constructed so as to facilitate their cleaning and the discharge of residues to reception facilities⁷. Existing ships⁸ must comply with this requirement so far as it is reasonable and practicable to do so⁹.

Every ship to which these provisions apply¹⁰ must be provided with piping to enable residues from machinery spaces and machinery space bilges to be pumped to a reception facility¹¹. This piping must be led to the open deck and there fitted¹² with a flange¹³.

Piping to and from sludge tanks must have no direct connection overboard other than the required¹⁴ discharge connection¹⁵.

1 As to the meaning of 'ship' see PARA 365 note 2.

2 As to the meaning of 'GT' see PARA 367 note 2.

3 As to the meaning of 'tank' see PARA 373 note 6.

4 Ie in accordance with the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: see PARA 365 et seq and PARA 391 et seq.

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 25(1).

6 As to the meaning of 'new ship' see PARA 376 note 13.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 25(2).

8 As to the meaning of 'existing ship' see PARA 376 note 13.

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 25(2).

10 As to the ships to which these provisions apply see PARA 365.

11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 25(3).

12 Ie in accordance with dimensions given in Merchant Shipping Notice 1643/MARPOL 1 Sch 2. As to the meaning of 'Merchant Shipping Notice' see PARA 367 note 6.

13 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 25(3).

14 Ie the discharge connection required by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 25(3).

15 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 25(4).

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391. Pumping, piping and discharge arrangements of oil tankers.

In every oil tanker¹, a discharge manifold for the discharge of dirty ballast water or oil contaminated water to reception facilities must be located on the open deck on both sides of the ship².

In every oil tanker, pipe-lines for any discharge to the sea³ of ballast or oil contaminated water from cargo tank areas which may be permitted⁴ must be led to the open deck or to the ship's side above the waterline in the deepest ballast condition, or, subject to the approval of the Maritime and Coastguard Agency⁵, below the waterline:

- 675 (1) to enable such discharges below the waterline as are permitted⁶ to be made; and
- 676 (2) where the discharge outlet is located above the departure ballast waterline but not above the waterline in the deepest ballast condition, if so located before 1 January 1981⁷.

In new oil tankers⁸, means must be provided for stopping the discharge into the sea of ballast water or oil contaminated water from cargo tank areas, other than permitted discharges below the waterline⁹, from a position on the upper deck or above, and so located that the manifold¹⁰ and the discharge to the sea from the pipe-lines¹¹ may be visually observed¹². The means for stopping the discharge may be situated elsewhere than at the observation position if an effective communication system, such as a telephone or radio system, is provided between the observation position and the discharge control position¹³.

Every new oil tanker required to be provided with segregated ballast¹⁴ tanks or fitted with a crude oil¹⁵ washing system must comply with the following requirements:

- 677 (a) it must be equipped with oil piping so designed and installed that oil retention in the lines is minimised;
- 678 (b) means must be provided to drain all cargo pumps and all oil lines at the completion of cargo discharge where necessary by connection to a stripping device, so designed that the line and pump drainings are capable of being discharged both ashore and to a cargo tank or a slop tank¹⁶; for discharge ashore a special small diameter line must be provided and connected outboard of the deck manifold valves, both port and starboard¹⁷.

Every existing crude oil tanker¹⁸ required to be provided with segregated ballast tanks, or to be fitted with a crude oil washing system, or to operate with dedicated clean ballast¹⁹ tanks must comply with the provisions of head (b) above²⁰.

Ballast water or oil contaminated water from the cargo tank areas of any oil tanker must be discharged only above the waterline, except that:

- 679 (i) segregated ballast and clean ballast may be discharged below the waterline in ports or at offshore terminals or at sea by gravity, provided that the surface of the

- ballast water has been examined immediately before the discharge to ensure that no contamination with oil has taken place;
- 680 (ii) existing oil tankers which, without modification, are not capable of discharging segregated ballast above the waterline may discharge segregated ballast below the waterline at sea, provided that the surface of the ballast water has been examined immediately before the discharge to ensure that no contamination with oil has taken place;
- 681 (iii) existing oil tankers operating with dedicated clean ballast tanks which, without modification, are not capable of discharging ballast water from the dedicated clean ballast tanks above the waterline may discharge this ballast below the waterline provided that the discharge of the ballast water is supervised with the aid of an oil content meter²¹;
- 682 (iv) dirty ballast water or oil contaminated water from tanks in the cargo area²² of an oil tanker at sea, other than slop tanks, may be discharged by gravity below the waterline, provided that sufficient time has elapsed in order to allow oil/water separation to have taken place and the ballast water has been examined immediately before the discharge with an oil/water interface detector²³, in order to ensure that the height of the interface is such that the discharge does not involve any increased harm to the marine environment;
- 683 (v) dirty ballast water or oil contaminated water from cargo tank areas of an existing oil tanker may be discharged below the waterline, subsequent to or in lieu of discharge by the method referred to in head (iv) above, provided that a part of the flow of such water is led through permanent piping to a readily accessible location on the upper deck or above where it may be visually observed during the discharge operation and such part flow arrangements comply with the specified requirements²⁴.

1 As to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.

2 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 26(1).

3 As to the meaning of 'sea' see PARA 366 note 3.

4 I.e. under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12 (see PARA 375), reg 13 (see PARA 376) or reg 16 (see PARA 379).

5 As to the meaning of 'Maritime and Coastguard Agency' see PARA 367 note 6.

6 I.e. permitted by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 26(6); see the text and notes 20-23.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 26(2) (amended by SI 2003/404).

8 As to the meaning of 'new oil tanker' see PARA 380 note 1.

9 See note 6.

10 I.e. the manifold referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 26(1).

11 I.e. the pipe-lines referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 26(2).

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 26(3).

13 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 26(3).

14 As to the meaning of 'segregated ballast' see PARA 373 note 11.

15 As to the meaning of 'crude oil' see PARA 365 note 8.

16 As to the meaning of 'slop tank' see PARA 373 note 12.

17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 26(4).

18 As to the meaning of 'existing oil tanker' see PARA 381 note 1; and as to the meaning of 'crude oil tanker' see PARA 380 note 1.

19 As to the meaning of 'clean ballast' see PARA 373 note 9.

20 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 26(5).

21 Ie as provided for in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 20(3): see PARA 385.

22 For these purposes, 'area', in relation to a ship, is to be calculated in all cases to moulded lines: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

23 Ie of the kind referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 15(3)(e): see PARA 378.

24 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 26(6). The requirements so specified are those set out in Merchant Shipping Notice 1643/MARPOL 1 Sch 3: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 25(6). As to the meaning of 'Merchant Shipping Notice' see PARA 367 note 6.

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E. MINIMISING OIL POLLUTION DUE TO SIDE AND BOTTOM DAMAGE

392. Limitation of size and arrangement of cargo tanks.

Every new oil tanker¹ must comply with the following provisions; and every existing oil tanker² must comply with the following provisions if:

- 684 (1) it was delivered to its first owner after 1 January 1977; or
- 685 (2) it was delivered to its first owner on or before 1 January 1977 and the building contract for the tanker was placed after 1 January 1974, or, in cases where there was no building contract, the keel was laid or the tanker was at a similar stage of construction after 30 June 1974³.

Cargo tanks of oil tankers must be of such size and arrangement that the hypothetical outflow⁴ O_c or O_s ⁵, anywhere in the length⁶ of the ship does not exceed 30,000 cubic metres or $400^3[\text{radic}]DW$, whichever is the greater, but subject to a maximum of 40,000 cubic metres⁷.

The volume of any one wing cargo oil tank⁸ of an oil tanker must not exceed 75 per cent of the limits of the hypothetical outflow O_c or O_s referred to above⁹. The volume of any one centre cargo oil tank¹⁰ must not exceed 50,000 cubic metres¹¹. However, in segregated ballast oil tankers¹² the permitted volume of a wing cargo oil tank situated between two segregated ballast tanks, each exceeding L_c in length may be increased to the maximum limit of hypothetical oil outflow provided that the width of the wing tanks exceeds t_c ¹³.

The length of each cargo tank must not exceed 10 metres or one of the following values, whichever is the greater:

- 686 (a) where no longitudinal bulkhead is provided inside the cargo tanks, the lesser of:

$$(0.5 \frac{b_i}{B} + 0.1)L \text{ and } 0.2L;$$

- 687 (b) where a centreline longitudinal bulkhead is provided inside the cargo tanks:

$$(0.25 \frac{b_i}{B} + 0.15)L;$$

- 688 (c) where two or more longitudinal bulkheads are provided inside the cargo tanks:

98

- 24. (i) for wing cargo tanks:

99

$0.2L_i$

.1

25. (ii) for centre cargo tanks:
26. (A) if
- 100

$$\frac{b_i}{B}$$

.2

27. is equal to or greater than one-fifth:
- 101

$0.2L_i$

.3

28. (B) if
- 102

$$\frac{b_i}{B}$$

.4

29. is less than one-fifth:
30. where no centreline longitudinal bulkhead is provided:
- 103

$$(0.5\frac{b_i}{B} + 0.15)L_i$$

.5

31. where a centreline longitudinal bulkhead is provided:
- 104

$$(0.25\frac{b_i}{B} + 0.15)L_i$$

and, for these purposes, 'b_i' is the minimum distance from the ship's side to the outer longitudinal bulkhead of the tank in question measured inboard at right angles to the centreline at the level corresponding to the assigned summer freeboard¹⁴.

In order not to exceed the volume limits established by the above provisions¹⁵ and irrespective of the type of cargo transfer system installed, when such a system interconnects two or more cargo tanks, valves or other similar closing devices must be provided for separating the tanks from each other¹⁶. These valves or devices must be closed when the tanker is at sea¹⁷.

Lines of piping which run through cargo tanks in a position less than t_c from the ship's side or less than V_s¹⁸ from the ship's bottom must be fitted with valves or similar closing devices at the point at which they open into any cargo tank¹⁹. These valves must be kept closed at sea at any

time when the tanks contain cargo oil, except that they may be opened for cargo transfer needed for the purpose of trimming of the ship²⁰.

- 1 As to the meaning of 'new ship' see PARA 376 note 13; as to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.
- 2 As to the meaning of 'existing oil tanker' see PARA 381 note 1.
- 3 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 28(1).
- 4 For these purposes, 'hypothetical outflow of oil' has the meaning set out in Merchant Shipping Notice 1643/MARPOL 1 Sch 4: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 27. As to the meaning of 'Merchant Shipping Notice' see PARA 367 note 6.
- 5 Is calculated in accordance with the provisions of Merchant Shipping Notice 1643/MARPOL 1 Sch 4.
- 6 As to the meaning of 'length' see PARA 380 note 21.
- 7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 28(2).
- 8 For these purposes, 'wing tank' means any tank adjacent to the side shell plating: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). As to the meaning of 'tank' see PARA 373 note 6.
- 9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 28(3).
- 10 For these purposes, 'central tank' means any tank inboard of a longitudinal bulkhead: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).
- 11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 28(3).
- 12 Is as defined in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 18: see PARA 383.
- 13 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 28(3). For these purposes, 't_c' is defined in Merchant Shipping Notice 1643/MARPOL 1 Sch 4: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 28(3).
- 14 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 28(4).
- 15 Is the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 28(2)-(4).
- 16 See note 15.
- 17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 28(5). As to the meaning of 'sea' see PARA 366 note 3.
- 18 Is where 'V_s' is defined in Merchant Shipping Notice 1643/MARPOL 1.
- 20 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 28(6).

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393. Subdivision and stability.

Every new oil tanker¹ must comply with the subdivision and damage stability criteria².

The master of every new oil tanker and the person in charge of a new non-self propelled oil tanker³ must be supplied by the owner with:

- 689 (1) information relating to loading and distribution of cargo necessary to ensure compliance with these provisions; and
- 690 (2) data on the ability of the ship to comply with the damage stability criteria prescribed by these provisions, including the effect of any lesser requirements that may have been imposed by the Secretary of State⁴.

Such information and data must be supplied in an approved form⁵.

Every oil tanker of 5,000 tons deadweight⁶ and above (a) for which the building contract was placed on or after 1 February 1999; (b) in the absence of a building contract, the keel of which was laid, or which was at a similar stage of construction, on or after 1 August 1999; (c) the delivery of which is on or after 1 February 2002; or (d) which has undergone a major conversion (i) for which the contract was placed after 1 February 1999; (ii) in the absence of a contract, the construction work of which was begun after 1 August 1999; or (iii) which is completed after 1 February 2002, must comply with the intact stability criteria⁷.

1 As to the meaning of 'new ship' see PARA 376 note 13; as to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.

2 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 29(1). The criteria are those specified in Merchant Shipping Notice 1643/MARPOL 1 Sch 5: see the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 29(1). As to the meaning of 'Merchant Shipping Notice' see PARA 367 note 6.

3 le to which these provisions apply: see PARA 365.

4 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 29(2). As to the Secretary of State see PARA 58.

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 29(2).

6 As to the meaning of 'deadweight' see PARA 378 note 19.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 29A (added by SI 2000/483). The criteria are those set out in Merchant Shipping Notice 1643/MARPOL 1 Sch 5A: see the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 29A (as so added).

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F. DESIGN AND CONSTRUCTION

394. 'New' oil tankers (building contracts after 5 July 1993).

The following provisions apply to oil tankers¹ of 600 tons deadweight² and above:

- 691 (1) for which the building contract is placed on or after 6 July 1993; or
- 692 (2) in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after 6 January 1994; or
- 693 (3) the delivery of which is on or after 6 July 1996; or
- 694 (4) which has undergone a major conversion³ for which the contract is placed after 6 July 1993 or, in the absence of a contract, the construction work of which is begun after 6 January 1994 or which is completed after 6 July 1996⁴.

Every oil tanker of 5,000 tons deadweight and above must comply with the following requirements⁵, that is to say, the entire cargo tank length must be protected⁶ by ballast tanks or spaces other than cargo and fuel oil tanks⁷.

Double bottom tanks or spaces⁸ may, however, be dispensed with, if the design of the tanker meets the specified conditions⁹.

Instead of complying with the above requirements¹⁰, an oil tanker of 5,000 tons deadweight and above¹¹ may conform to other methods of design and construction, provided that such methods:

- 695 (a) ensure at least the same level of protection against oil pollution in the event of collision or stranding; and
- 696 (b) have the approval of the Secretary of State based on guidelines developed by the International Maritime Organisation¹².

In an oil tanker to which these provisions apply, oil must not be carried in any space extending forward of a collision bulkhead¹³; and an oil tanker which is not so required to have a collision bulkhead must not carry oil in any space extending forward of the transverse plane perpendicular to the centreline that is located as if it were a collision bulkhead so provided¹⁴.

In approving the design and construction of an oil tanker to which these provisions apply, the certifying authority¹⁵ must have due regard to general safety considerations, including the need for the maintenance of and for inspections of wing¹⁶ and double bottom tanks or spaces¹⁷.

1 As to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.

2 As to the meaning of 'deadweight' see PARA 378 note 19.

3 As to the meaning of 'major conversion' see PARA 380 note 1.

4 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(1).

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(2). In the case of an oil tanker in respect of which reg 19 (see PARA 384) makes provision, compliance with the requirements of reg 30(3) (see the text and notes 6, 7) is instead of compliance with the requirements of reg 19: reg 30(2).

6 le in accordance with Merchant Shipping Notice 1643/MARPOL 1 Sch 6. As to the meaning of 'Merchant Shipping Notice' see PARA 367 note 6.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(3).

8 le as required by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(3).

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(4). The conditions so specified are those set out in Merchant Shipping Notice 1643/MARPOL 1 Sch 7: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(4).

10 le the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(3) or (4).

11 le an oil tanker referred to in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(2).

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(5). As to the Secretary of State see PARA 58. As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13.

13 le provided in accordance with the Merchant Shipping (Cargo Ship Construction and Survey) Regulations 1984, SI 1984/1217, reg 3 (SI 1984/1217 revoked and replaced by the Merchant Shipping (Cargo Ship Construction) Regulations 1997, SI 1997/1509): see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 599.

14 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(6).

15 As to the meaning of 'certifying authority' see PARA 368 note 5.

16 As to the meaning of 'wing tank' see PARA 392 note 8.

17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 30(7).

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395. 'Existing' oil tankers (building contracts before 6 July 1993): compliance with double hull or equivalent design requirements for single hull oil tankers.

The following provisions apply to every oil tanker¹ of 5,000 tons deadweight² and above:

- 697 (1) for which the building contract was placed before 6 July 1993³; or
- 698 (2) in the absence of a building contract, the keel of which was laid or which was at a similar stage of construction before 6 January 1994⁴; or
- 699 (3) the delivery of which was before 6 July 1996⁵; or
- 700 (4) which has undergone a major conversion⁶ (a) for which the building contract was placed before 6 July 1993⁷; or (b) in the absence of a contract, the construction work of which was begun on or before 6 January 1994⁸; or (c) which was completed on or before 6 July 1996⁹.

The provisions do not apply to an oil tanker which complies with specified requirements¹⁰ or which conforms to other methods of design and construction which ensure at least the same level of protection against oil pollution in the event of collision or stranding and have the approval of the Secretary of State based on guidelines developed by the International Maritime Organisation¹¹. An oil tanker which does not meet those requirements in all respects regarding minimum distances between the cargo tank boundaries of the ship side and bottom plating is to be treated as meeting those requirements if the side protection distance is not less than that which the IBC Code¹² specifies for Type 2 cargo tank location¹³ and the bottom protection distance is not less than the lesser of B/15 and two metres¹⁴.

A category 1 oil tanker¹⁵ to which the provisions apply must not operate if it is a United Kingdom oil tanker¹⁶, and if it is any other oil tanker, must not enter a port or offshore terminal or anchor in an area under the jurisdiction of the United Kingdom (a) if the ship was delivered in 1981 or earlier or was delivered in 1982 on or before 4 August, on or after 17 September 1996¹⁷; (b) if the ship was delivered in 1982 after 4 August on or after the anniversary in 2005 of the day and month of that ship's delivery¹⁸.

A category 2 or 3 oil tanker¹⁹ to which the provisions apply must not operate if it is a United Kingdom oil tanker²⁰, and if it is any other oil tanker, must not enter a port or offshore terminal or anchor in an area under the jurisdiction of the United Kingdom (i) if the ship was delivered in 1976 or earlier or was delivered in 1977 on or before 4 August, on or after 17 September 1996²¹; (ii) if the ship was delivered in 1977 after 4 August, on or after the anniversary in 2005 of the day and month of that ship's delivery²²; (iii) if the ship was delivered in 1978 or 1979, on or after the anniversary in 2006 of the day and month of that ship's delivery²³; (iv) if the ship was delivered in 1980 or 1981, on or after the anniversary in 2007 of the day and month of that ship's delivery²⁴; (v) if the ship was delivered in 1982, on or after the anniversary in 2008 of the day and month of that ship's delivery²⁵; (vi) if the ship was delivered in 1983, on or after the anniversary in 2009 of the day and month of that ship's delivery²⁶; (vii) if the ship was delivered in 1984 or later, on or after the anniversary in 2010 of the day and month of that ship's delivery²⁷.

A category 2 or 3 oil tanker which is equipped only with double bottoms or double sides not used for the transport of oil and extending for the whole length of the cargo tank or with

double-hulled spaces not used for the transport of oil and extending for the whole length of the cargo tank, but which do not meet the conditions for exemption²⁸, may continue to operate after the date set out in relation to such a ship²⁹, but not beyond the anniversary of the date of delivery of the ship in the year 2015 or the date on which the ship reaches the age of 25 years from its date of delivery, whichever is the sooner³⁰.

No oil tanker carrying heavy grades of oil³¹ will be allowed to enter or leave a port or offshore terminal or to anchor in an area under the jurisdiction of the United Kingdom unless (A) it is a double hull oil tanker³²; (B) it is an oil tanker of less than 5,000 tons deadweight operating on or before the anniversary in 2008 of the day and month of the ship's delivery³³; (C) it is an oil tanker operating exclusively in ports and inland navigation and duly certified under the inland waterway legislation applicable to the ship³⁴; or (D) it is an ice-strengthened single-hull oil tanker operating before 21 October 2005 in ice conditions which require the use of such a vessel, equipped with a double bottom not used for the transport of oil and extending over the entire length of the cargo tank, carrying heavy grades of oil only in its central tanks³⁵.

If a specified category 2 or 3 oil tanker is a United Kingdom tanker it will not operate, and if it is any other tanker it will not enter or leave a port or offshore terminal or anchor in an area under the jurisdiction of the United Kingdom, unless it complies with the Condition Assessment Scheme³⁶.

A category 2 or 3 oil tanker, on or after the anniversary in 2015 of the day and month of its delivery, must not operate if it is a United Kingdom oil tanker, and if it is any other oil tanker, must not enter a port or offshore terminal under the jurisdiction of the United Kingdom³⁷.

The Secretary of State may grant an exemption³⁸ only where that exemption allows an oil tanker to enter a port or offshore terminal under the jurisdiction of the United Kingdom, is granted in exceptional circumstances, and is granted because the oil tanker is in difficulty and in search of a place of refuge, or is unloaded and proceeding to a port of repair³⁹.

1 As to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.

2 As to the meaning of 'deadweight' see PARA 378 note 19.

3 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(1)(a) (reg 31 substituted by SI 2004/303).

4 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(1)(b) (as substituted: see note 3).

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(1)(c) (as substituted: see note 3).

6 As to the meaning of 'major conversion' see PARA 380 note 1.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(1)(d)(i) (as substituted: see note 3).

8 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(1)(d)(ii) (as substituted: see note 3).

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(1)(d)(iii) (as substituted: see note 3).

10 I.e. the requirements of Merchant Shipping Notice 1643/MARPOL 1 Sch 6 or those requirements as modified in accordance with Sch 7: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(2)(a), (b) (as substituted: see note 3). As the meaning of 'Merchant Shipping Notice' see PARA 367 note 6.

11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(2)(c) (as substituted: see note 3). As to the Secretary of State see PARA 58. As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13.

12 le the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (1998 Edition), published by the International Maritime Organisation: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(3)(b) (as substituted: see note 3).

13 le the said distance is nowhere less than 760 mm from the shell plating: see the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(3)(a) (as substituted: see note 3).

14 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(3) (as substituted: see note 3).

15 'Category 1 oil tanker' means an oil tanker of 20,000 tons deadweight and above carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, and of 30,000 tons dead weight and above carrying oil other than the above, which does not comply with the requirements for new oil tankers as defined in the Convention Annex I reg 1(26): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(11) (as substituted: see note 3). As to the meaning of 'crude oil' see PARA 365 note 8. 'Fuel oil' means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the specification acceptable to the International Maritime Organisation: reg 31(11) (as so substituted). 'Heavy diesel oil' means marine diesel oil, other than those distillates of which more than 50% by volume distils at a temperature not exceeding 340°C when tested by the method acceptable to the International Maritime Organisation: reg 31(11) (as so substituted). 'New oil tanker' means a new oil tanker as defined in the Convention Annex I reg 1(26): SI 1996/2154 reg 31(11) (as so substituted). As to the meaning of 'Convention' see PARA 367 note 6.

16 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(4)(a) (as substituted: see note 3). As to the meaning of 'United Kingdom' see PARA 1 note 2.

17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(4)(b)(i) (reg 34(4) (b) substituted by SI 2005/1916).

18 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(4)(b)(ii) (as substituted: see note 17).

19 'Category 2 oil tanker' means an oil tanker of 20,000 tons deadweight and above carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, or of 30,000 tons deadweight and above carrying oil other than the above, which complies with the requirements for new oil tankers as defined in the Convention Annex I reg 1(26), and is provided with segregated ballast tanks protectively located ('SBT/PL'): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(11) (as substituted (see note 3); definition substituted by SI 2005/1916). 'Category 3 oil tanker' means an oil tanker of 5,000 tons deadweight and above other than a category 1 or category 2 oil tanker: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(11) (as so substituted).

20 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(5)(a) (as substituted: see note 3).

21 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(5)(b)(i) (reg 31(5) (b) substituted by SI 2005/1916).

22 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(5)(b)(ii) (as substituted: see note 21).

23 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(5)(b)(iii) (as substituted: see note 21).

24 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(5)(b)(iv) (as substituted: see note 21).

25 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(5)(b)(v) (as substituted: see note 21).

26 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(5)(b)(vi) (as substituted: see note 21).

27 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(5)(b)(vii) (as substituted: see note 21).

28 le the Convention Annex 1 reg 13G para 1(c).

29 le as specified in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(5).

30 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(6) (reg 31(6)-(8) substituted and reg 31(8A) added by SI 2005/1916).

31 'Heavy grades of oil' means (1) crude oils having a density at 15°C which is higher than 900kg/m³(5) (which corresponds to an API grade of less than 25.7); (2) fuel oils having a density at 15°C which is higher than 900 kg/m³ or a kinematic viscosity at 50°C which is higher than 180mm²/s(6) (which corresponds to a kinematic viscosity of over 189cSt); and (3) bitumen and tar and their emulsions: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(11) (as substituted (see note 3); definition substituted by SI 2005/1916).

32 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(7)(a) (as substituted: see note 30). 'Double hull tanker' means (1) in relation to an oil tanker of 5,000 tonnes deadweight and above, an oil tanker which complies with (a) the double hull or equivalent design requirements of the Convention Annex I reg 13F; or (b) the provisions of the Convention Annex I reg 13G para 1(c); and (2) in relation to an oil tanker of 600 tonnes deadweight and above but less than 5,000 tonnes deadweight, an oil tanker which (a) is fitted with double bottom tanks or spaces complying with the provisions of the Convention Annex I reg 13F(7)(a); (b) is fitted with wing tanks or spaces arranged in accordance with the Convention Annex I reg 13F(3)(a); and (c) complies with the requirement for distance w as referred to in regulation of the Convention Annex I reg 13F(7)(b): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(11) (as so substituted; and definition substituted by SI 2005/1916).

Subject to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(2) (see the text and notes 10, 11), reg 31(7) applies to an oil tanker of 600 tons deadweight and above: reg 31(1A) (added by SI 2005/1916).

33 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(7)(b) (as substituted: see note 30). See note 33.

34 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(7)(c) (as substituted: see note 30). See note 33.

35 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(7)(d) (as substituted: see note 30). See note 33.

36 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(8A) (as added: see note 30).

37 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(9) (as substituted: see note 3).

38 le an exemption from the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 31(4)-(9) under reg 2(5) (see PARA 365): reg 31(10) (as substituted: see note 3).

39 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 31(10) (as substituted: see note 3).

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G. OFFSHORE INSTALLATIONS

396. Requirements for offshore installations.

Offshore installations¹, when engaged in the exploration, exploitation and associated offshore processing of sea bed mineral resources, must comply with the statutory requirements² applicable to ships³ of 400 GT⁴ and above other than oil tankers⁵, notwithstanding that the installations are not proceeding on a voyage, except that:

- 701 (1) they must be equipped as far as practicable with the required systems and tanks⁶;
- 702 (2) they must keep a record of all operations involving discharges⁷ of oil or oily mixtures⁸, in an approved form⁹.

An offshore installation when so engaged must not discharge into the sea¹⁰ any oil or oily mixture¹¹ with an oil content of 15 ppm¹² or more¹³.

1 As to the meaning of 'offshore installation' see PARA 375 note 31.

2 Ie the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: see PARA 365 et seq.

3 As to the meaning of 'ship' see PARA 365 note 2.

4 As to the meaning of 'GT' see PARA 367 note 2.

5 As to the meaning of 'oil tanker' see PARA 365 note 13.

6 Ie the systems and tanks required by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 14 (see PARA 377) and reg 25(1), (2) (see PARA 390).

7 As to the meaning of 'discharge' see PARA 366 note 3.

8 For these purposes, 'oil or oily mixtures' means discharge associated with machinery space drainage and does not include production or displacement water discharge: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 32(3) (amended by SI 2009/1210). As to the meaning of 'oil' see PARA 365 note 8; and as to the meaning of 'oily mixture' see PARA 373 note 14.

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 32(1).

10 As to the meaning of 'sea' see PARA 366 note 3.

11 Ie unless the discharge is one specified in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 11: see PARA 374.

12 As to the meaning of 'ppm' see PARA 373 note 9.

13 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 32(2).

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H. POLLUTION ARISING FROM OIL POLLUTION ACCIDENT

397. Shipboard oil pollution emergency plan.

Every oil tanker¹ of 150 GT² and above and every ship³, not being an oil tanker, of 400 GT and above must carry on board an approved shipboard oil pollution emergency plan⁴.

The plan must be in accordance with the guidelines for the development of shipboard oil pollution emergency plans adopted by the Marine Environment Protection Committee of the International Maritime Organisation⁵; and the plan must include at least:

- 703 (1) the procedure to be followed by the master or other persons having charge of the ship to report an oil pollution incident⁶;
- 704 (2) the list of persons, including national and local authorities, to be contacted in the event of an oil pollution incident;
- 705 (3) a detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of oil following an incident; and
- 706 (4) the procedures and point of contact on the ship for co-ordinating shipboard action with national and local authorities in combating the pollution⁷.

In the case of certain ships⁸, such a plan may be combined with the shipboard marine pollution emergency plan for noxious liquid substances⁹, and in this case the title of the plan should be 'Shipboard Marine Pollution Emergency Plan'¹⁰.

1 As to the meaning of 'oil tanker' see PARA 365 note 13; and as to the meaning of 'oil' see PARA 365 note 8.

2 As to the meaning of 'GT' see PARA 367 note 2.

3 As to the meaning of 'ship' see PARA 365 note 2.

4 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 33(1).

5 Ie the guidelines adopted on 6 March 1992 by Resolution MEPC 54(32) as amended by Resolution MEPC86(44) of 13 March 2000, including any document amending it which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice. As to the meaning of 'Merchant Shipping Notice' see PARA 367 note 6. As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13. As to the Secretary of State see PARA 58.

6 Ie as required by the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 659) and the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004, SI 2004/2110 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 659).

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 33(2) (amended by SI 2004/303; and SI 2004/2110).

8 Ie ships to which the Convention Annex II reg 16 also applies. As to the meaning of 'Convention' see PARA 367 note 6.

9 Ie required under the Convention Annex II reg 16.

10 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 33(3) (added by SI 2004/303).

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I. POWERS OF INSPECTION ETC

398. Power to inspect.

A ship to which these provisions apply¹ is subject, in any United Kingdom port or offshore terminal, to inspections by persons appointed by the Secretary of State².

Any such inspection must be limited to verifying that there is on board a valid IOPP Certificate³ in the prescribed form⁴ or a UKOPP Certificate⁵ in the prescribed form⁶, unless there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that Certificate⁷. In that case, or if the ship does not carry a valid certificate, the inspector must take such steps as he may consider necessary to ensure that the ship will not sail until she can proceed to sea without presenting an unreasonable threat of harm to the marine environment⁸. The Secretary of State may in such a case permit the ship to leave the port or offshore terminal for the purposes of proceeding to the nearest appropriate repair yard⁹.

The inspector may¹⁰ investigate any operation¹¹ if there are clear grounds for believing that the master or crew are not familiar with essential ship board procedures for preventing pollution by oil¹². In the event of any such inspection revealing deficiencies the inspector must take such steps as to ensure that the ship will not sail until the situation has been brought¹³ to order¹⁴.

Upon receiving evidence that a particular ship has discharged¹⁵ oil or an oily mixture¹⁶, the Secretary of State must cause the matter to be investigated and must inform the state which has reported the contravention, as well as the International Maritime Organisation¹⁷, of the action taken¹⁸.

1 As to the ships to which these provisions apply see PARA 365.

2 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 34(1)(a). For these purposes, any person appointed as an inspector has the powers of an inspector set out in the Merchant Shipping Act 1995 s 259 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49) and s 260 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 34(3). As to the Secretary of State see PARA 58.

3 As to the meaning of 'IOPP Certificate' see PARA 367 note 4.

4 Ie in the form prescribed by the Convention. As to the meaning of 'Convention' see PARA 367 note 6.

5 As to the meaning of 'UKOPP Certificate' see PARA 367 note 5.

6 Ie in a form prescribed by the Secretary of State.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 34(1)(b).

8 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 34(1)(b).

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 34(1)(b).

10 Ie notwithstanding the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 34(1)(b) (see the text and notes 3-9) and without prejudice to any specific control provisions over operational procedures provided for in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: see PARA 365 et seq.

11 le any operation regulated by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154.

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 34(1)(c). As to the meaning of 'oil' see PARA 365 note 8.

13 le in accordance with the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154.

14 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 34(1)(c).

15 le contrary to the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154. As to the meaning of 'discharge' see PARA 366 note 3.

16 As to the meaning of 'oily mixture' see PARA 373 note 14.

17 As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13.

18 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 34(2).

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399. Power to deny entry or detain.

If a harbour master¹ has reason to believe that a ship² which he believes proposes to enter or leave the harbour does not comply with the specified requirements³, he must immediately report the matter to the Secretary of State⁴ who, if he is satisfied that the ship presents an unreasonable threat of harm to the marine environment, may deny the entry or exit of such ship to United Kingdom ports or offshore terminals⁵.

In any case where:

- 707 (1) a ship (a) is suspected of a contravention of certain requirements⁶; or (b) does not comply with any other requirement of the specified requirements⁷;
- 708 (2) the steps to be taken by an inspector⁸ involve detention of the ship⁹;
- 709 (3) an accident occurs to a non-United Kingdom ship¹⁰, or a defect is discovered in a non-United Kingdom ship, either of which substantially affects the integrity of the ship or the efficiency or completeness of its equipment, and a full and proper report of that accident or defect has not been made to the appropriate authority for that ship¹¹; or
- 710 (4) within a reasonable period of a report being made of an accident to or defect in a non-United Kingdom ship the Secretary of State is not satisfied that action taken as respects that ship is sufficient to restore the integrity of the ship or the efficiency or completeness of its equipment¹²,

the ship is liable to be detained and the relevant provisions of the Merchant Shipping Act 1995¹³ (which relate to the detention of a ship) have effect in relation to that ship¹⁴.

Where a ship, other than a United Kingdom ship, is denied entry¹⁵ or is detained¹⁶, the Secretary of State must immediately inform the consul or diplomatic representative of the state whose flag the ship is entitled to fly or the appropriate maritime authorities of that state¹⁷.

1 For these purposes, 'harbour master' includes a dock master, pier master and any person specifically appointed by a harbour authority (within the meaning of the Merchant Shipping Act 1995 s 151(1) (see PARA 428 note 6)) for the purpose of enforcing the provisions of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (see PARA 365 et seq) or the Merchant Shipping Act 1995 Pt VI Ch 2 (ss 131-151) (see PARA 426 et seq): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2) (definition added by SI 2009/1210).

2 As to the meaning of 'ship' see PARA 365 note 2.

3 Ie the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: see PARA 365 et seq.

4 As to the Secretary of State see PARA 58.

5 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(1) (amended by SI 2005/1916). As to the meaning of 'United Kingdom' see PARA 1 note 2.

6 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(2)(a)(i) (reg 35(2) substituted by SI 2004/303; and the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(2)(a) further substituted by SI 2005/1916). The reference is to the requirements of the

Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12 (see PARAS 375, 377), reg 13 (see PARA 376) or reg 16 (see PARAS 375, 379, 387).

In any case where a ship is liable to be detained under reg 35(2)(a)(i), in relation to a suspected contravention occurring in the waters over which a harbour master exercises jurisdiction, that harbour master may also detain that ship: reg 35A(1) (reg 35A added by SI 2009/1210). In such a case the Merchant Shipping Act 1995 s 284(1A)-(5), (8) (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1253) has effect in relation to that ship as if (1) the reference to competent authority in s 284(2) includes a reference to the harbour authority; and (2) the persons in relation to whom s 284(4) applies include the harbour master or any person acting on behalf of the harbour master: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35A(2) (as so added). Where a ship, other than a United Kingdom ship, is detained under reg 35A(1) (see above), the harbour master must immediately notify the Secretary of State, who must immediately inform the consul or diplomatic representative of the state whose flag the ship is entitled to fly, or the appropriate maritime authorities of that state: reg 35A(3) (as so added). Regulation 37(3)-(10) (see PARA 401) applies in relation to a detention under reg 35A(1) (see above) as if for 'the Secretary of State', wherever it occurs, there were substituted 'the harbour master': reg 35A(4) (as so added).

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(2)(a)(ii) (as substituted: see note 6). The reference is to the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: see PARA 365 et seq.

8 le under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 34(1)(b) or (c): see PARA 398.

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(2)(b) (as substituted: see note 6).

10 As to the meaning of 'United Kingdom ship' see PARA 365 note 2.

11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(2)(c) (as substituted: see note 6).

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(2)(d) (as substituted: see note 6).

13 le the Merchant Shipping Act 1995 s 284(1)-(6), (8): see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1253.

14 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(2) (as substituted: see note 6). Specifically the Merchant Shipping Act 1995 s 284(1)-(6), (8) (see note 13) has effect as if for the words 'this Act' wherever they appear, there were substituted the words 'the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996': see the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(2) (as so substituted).

15 le pursuant to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(1).

16 le pursuant to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(2) (see the text and notes 6-14) or reg 37(3) (see PARA 401).

17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(3).

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400. Penalties.

If any ship¹ fails to comply with any requirement of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996², other than the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers³, oil tankers⁴ and the methods for preventing oil pollution from ships operating in special areas⁵, the owner and the master of the ship are each guilty of an offence punishable by a fine⁶. It is a defence for a person charged with such an offence to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence⁷.

Where such an offence under this provision⁸ is committed, or would have been committed⁹, by any person due to the act or default of some other person, that other person is guilty of the offence; and a person may be charged with and convicted of an offence by virtue of this provision whether or not proceedings are taken against the first-mentioned person¹⁰.

If any ship fails to comply with any requirement of the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers¹¹, oil tankers¹² and the methods for preventing oil pollution from ships operating in special areas¹³, the owner and the master are each guilty of an offence¹⁴, and liable on conviction to a fine¹⁵.

If any oil¹⁶ or oily mixture¹⁷ is discharged¹⁸ from a ship in contravention of any requirement of the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers¹⁹, oil tankers²⁰ and the methods for preventing oil pollution from ships operating in special areas²¹, any person who causes or contributes to that discharge is guilty of an offence²², and liable on conviction to a fine²³.

Where a UK excepted ship²⁴ fails to comply with any of these requirements²⁵ because of a discharge into a part of the sea other than the United Kingdom or its territorial waters²⁶ of oil or oily mixture which results from damage to a ship or its equipment, neither the owner nor the master nor a crew member acting under the master's responsibility is guilty of an offence²⁷ in respect of that failure if (1) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and (2) neither the owner nor the master acted (a) with intent to cause damage; or (b) recklessly and with knowledge that damage would probably result²⁸.

1 As to the meaning of 'ship' see PARA 365 note 2.

2 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: see PARA 365 et seq.

3 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12: see PARA 375.

4 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13: see PARA 376.

5 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16: see PARA 379.

6 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36(1). Each is punishable on conviction on indictment by a fine and on summary conviction by a fine not exceeding the statutory maximum: see reg 36(1). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

- 7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36(3).
- 8 le under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36.
- 9 le save for the operation of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36(3): see the text and note 7.
- 10 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36(4).
- 11 See note 3.
- 12 See note 4.
- 13 See note 5.
- 14 le the Merchant Shipping Act 1995 s 131(3) (see PARA 425) applies as it applies to an offence under s 131.
- 15 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36A(1) (reg 36A added by SI 2009/1210). Each is punishable on summary conviction to a fine not exceeding £250,000 or on conviction on indictment to a fine: see Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36A(1) (as so added). Section 36A(1) is subject to s 36A(3): see the text and notes 24-28.
- 16 As to the meaning of 'oil' see PARA 365 note 8.
- 17 As to the meaning of 'oily mixture' see PARA 373 note 14.
- 18 As to the meaning of 'discharge' see PARA 366 note 3.
- 19 See note 3.
- 20 See note 4.
- 21 See note 5.
- 22 le the Merchant Shipping Act 1995 s 131(3) (see PARA 425) applies as it applies to an offence under s 131.
- 23 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36A(2) (as added: see note 15). Such person is liable on summary conviction to a fine not exceeding £250,000 or on conviction on indictment to a fine: see reg 36A(2) (as so added). Section 36A(2) is subject to s 36A(3): see the text and notes 24-28.
- 24 As to the meaning of 'UK excepted ship' see PARA 374 note 15; definition applied by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36A(4) (as added: see note 15).
- 25 le any requirement of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12, 13 or 16: see notes 3-5.
- 26 As to the meaning of 'United Kingdom' see PARA 1 note 2. As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.
- 27 le under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36A.
- 28 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 36A(3) (as added: see note 15).

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401. Enforcement and application of fines.

Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company¹ for the purposes of the institution of, or otherwise in connection with, proceedings for an offence of contravening the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers², oil tankers³ and the methods for preventing oil pollution from ships operating in special areas⁴ alleged to have been committed by the company as the owner of a ship⁵ is treated as duly served on that company if the document is served on the master of the ship; and any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996⁶, whether or not in pursuance of the above provisions, has, for that purpose, the right to go on board the ship in question⁷.

A person exercising the power of detention⁸ in respect of an alleged contravention of the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers⁹, oil tankers¹⁰ and the methods for preventing oil pollution from ships operating in special areas¹¹ must immediately release the ship if:

- 711 (1) no proceedings for the offence in question are instituted¹² within the period of seven days beginning with the day on which the vessel is detained;
- 712 (2) such proceedings, having been duly instituted¹³ within that period, are concluded without the defendant being convicted¹⁴;
- 713 (3) either the sum of £255,000 is paid to the Secretary of State by way of security or security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £255,000 is given to the Secretary of State; or
- 714 (4) where the defendant is convicted of the offence, any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid; or
- 715 (5) the release is ordered by a court or tribunal¹⁵, and any bond or other financial security ordered by such a court or tribunal is posted¹⁶.

The Secretary of State must repay any sum paid in pursuance of head (3) above or release any security so given:

- 716 (a) if no proceedings for the offence in question are instituted within the period of seven days beginning with the day on which the sum is paid; or
- 717 (b) if such proceedings, having been instituted within that period, are concluded without the defendant being convicted¹⁷.

Where a sum has been paid, or security has been given, by any person in pursuance of head (3) above and the defendant is convicted of the offence in question, the sum so paid or the amount made available under the security must be applied as follows:

- 718 (i) first in payment of any costs or expenses ordered by the court to be paid by the defendant; and
- 719 (ii) next in payment of any fine imposed by the court;

and any balance must be repaid to the person paying the sum, or giving the security¹⁸.

Where a fine imposed by a court in proceedings against the defendant of a ship for an offence under the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers¹⁹, oil tankers²⁰ and the methods for preventing oil pollution from ships operating in special areas²¹ is not paid or any costs or expenses ordered to be paid by him are not paid at the time ordered by the court, the court has power, in addition to any other powers for enforcing payment, to direct the amount remaining unpaid to be levied by distress or arrestment and sale of the ship, her tackle, furniture and apparel²².

Where a person is convicted of an offence under the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers²³, oil tankers²⁴ and the methods for preventing oil pollution from ships operating in special areas²⁵, and the court imposes a fine in respect of the offence, then, if it appears to the court that any person has incurred, or will incur, expenses in removing any pollution, or making good any damage, which is attributable to the offence, the court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses²⁶.

1 For these purposes, 'foreign company' means a company or body which is not one to which either of the Companies Act 1985 s 695 (repealed) or s 725 (repealed) (see now the Companies Act 2006 s 1139) (see **COMPANIES** vol 15 (2009) PARA 1836) applies so as to authorise the service of the document in question under either of those provisions: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(2).

2 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12: see PARA 375.

3 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13: see PARA 376.

4 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16: see PARA 379.

5 As to the meaning of 'ship' see PARA 365 note 2.

6 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154: see PARA 365 et seq.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(1).

8 Ie the power conferred by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35(2)(a): see PARA 399.

9 See note 2.

10 See note 3.

11 See note 4.

12 For these purposes, proceedings for an offence are instituted in England and Wales: (1) when a justice of the peace issues a summons or warrant under the Magistrates' Courts Act 1980 s 1 (see **MAGISTRATES**) in respect of the offence; (2) when a person is charged with the offence after being taken into custody without a warrant; (3) when a bill of indictment is preferred by virtue of the Administration of Justice (Miscellaneous Provisions) Act 1933 s 2(2)(b) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1206); and, where the application of this provision would result in there being more than one time for the institution of proceedings, they are to be taken to have been instituted at the earliest of those times: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(6)(a). As to the institution of proceedings in Scotland see reg 37(7) (amended by SI 2009/1210); and as to the institution of proceedings in Northern Ireland see the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(8).

13 Ie having been instituted through the power conferred by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(1).

14 For these purposes, proceedings for an offence are concluded without the defendant being convicted on the occurrence of one of the following events: (1) the discontinuance of the proceedings; (2) the acquittal of the defendant; (3) the quashing of the defendant's conviction for the offence; (4) the grant of Her Majesty's pardon in respect of the defendant's conviction for the offence: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(6)(b) (amended by SI 2009/1210).

15 Is a court or tribunal referred to in the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) art 292: see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 10.

16 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(3) (amended by SI 1997/1910; and SI 2009/1210). As to the Secretary of State see PARA 58.

17 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(4) (amended by SI 2009/1210).

18 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(5) (amended by SI 2009/1210).

19 See note 2.

20 See note 3.

21 See note 4.

22 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(9) (amended by SI 2009/1210).

23 See note 2.

24 See note 3.

25 See note 4.

26 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(10).

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J. OFFENCES COMMITTED OUTSIDE UNITED KINGDOM WATERS

402. Restriction on jurisdiction over offences outside United Kingdom limits.

No proceedings for an offence of contravening the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers¹, oil tankers² or the methods for preventing oil pollution from ships operating in special areas³ by a ship⁴ which is not a United Kingdom ship⁵, which relates to a discharge⁶ in the internal waters, territorial waters or exclusive economic zone of another state must be instituted⁷ unless:

- 720 (1) that state, the flag state⁸ or a state damaged or threatened by the discharge requests that proceedings be taken; or
- 721 (2) the discharge has caused or is likely to cause pollution in the internal waters, territorial sea⁹ or controlled waters¹⁰ of the United Kingdom¹¹.

Where proceedings for an offence of contravening the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers¹², oil tankers¹³ and the methods for preventing oil pollution from ships operating in special areas¹⁴ by a ship which is not a United Kingdom ship which relates to a discharge in the internal waters, territorial sea or exclusive economic zone of another state have been instituted but not concluded, and that state requests suspension of the proceedings, then:

- 722 (a) proceedings must be suspended; and
- 723 (b) the Secretary of State must transmit all the evidence and court records and documents relating to the case, together with any sum paid or security given¹⁵ to that state¹⁶.

It is a defence to a person charged with contravening the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers¹⁷, oil tankers¹⁸ or the methods for preventing oil pollution from ships operating in special areas¹⁹ for the defendant to show:

- 724 (i) that the ship is not a United Kingdom ship; and
- 725 (ii) the discharge took place outside the United Kingdom, its territorial waters and the controlled waters of the United Kingdom; and
- 726 (iii) the ship was in a port in the United Kingdom at the time of institution of proceedings by reason only of stress of weather or other reason beyond the control of the master or owner or charterer²⁰.

¹ le the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12: see PARA 375.

² le the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13: see PARA 376.

³ le the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16: see PARA 379.

4 As to the meaning of 'ship' see PARA 365 note 2.

5 As to the meaning of 'United Kingdom ship' see PARA 365 note 2.

6 As to the meaning of 'discharge' see PARA 366 note 3.

7 For these purposes, proceedings for an offence are to be treated as being instituted in the United Kingdom in the circumstances set out in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(6) (see PARA 401): reg 40.

8 For these purposes, 'flag state' means the state whose flag a ship is entitled to fly: Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2).

9 As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

10 For these purposes, 'controlled waters' means the waters specified as areas within which the jurisdiction and rights of the United Kingdom are exercisable by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996, SI 1996/2128 (amended by SI 1997/506) (defining the limits of the zone beyond the territorial sea around the United Kingdom and the Isle of Man in which jurisdiction is exercisable in order to prevent pollution by discharges from ships): Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 1(2). As to the meaning of 'United Kingdom' see PARA 1 note 2.

11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 38(1).

12 See note 1.

13 See note 2.

14 See note 3.

15 Ie pursuant to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(3)(c): see PARA 401.

16 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 38(2).

17 See note 1.

18 See note 2.

19 See note 3.

20 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 38(3).

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403. Suspension of proceedings at flag state request.

The following provisions relate to an alleged offence of contravening the provisions relating to ships other than oil tankers and machinery space bilges of oil tankers¹, oil tankers² or the methods for preventing oil pollution from ships operating in special areas³ by a ship⁴ which is not a United Kingdom ship⁵, in relation to a discharge⁶ outside the United Kingdom or its territorial waters⁷.

Any proceedings for such an offence must be stayed if the court is satisfied that the flag state⁸ has instituted proceedings corresponding to the proceedings in the United Kingdom in respect of the discharge, within six months of the institution of proceedings in the United Kingdom⁹; but this provision does not apply:

- 727 (1) where the discharge resulted in major damage to the United Kingdom; or
- 728 (2) the Secretary of State certifies that the flag state has repeatedly disregarded its obligation to enforce effectively the requirements of the Convention¹⁰ in respect of its ships¹¹.

Where proceedings instituted by the flag state have been brought to a conclusion, the suspended proceedings must be terminated¹².

Where the costs of the Secretary of State incurred in respects of proceedings duly suspended¹³ have been paid, any money paid or security given¹⁴ must be released¹⁵.

1 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 12: see PARA 375.

2 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 13: see PARA 376.

3 Ie the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 16: see PARA 379.

4 As to the meaning of 'ship' see PARA 365 note 2.

5 As to the meaning of 'United Kingdom ship' see PARA 365 note 2.

6 As to the meaning of 'discharge' see PARA 366 note 3.

7 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 39(1). As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31. As to the meaning of 'United Kingdom' see PARA 1 note 2.

8 As to the meaning of 'flag state' see PARA 402 note 8.

9 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 39(2)(a). For these purposes, proceedings for an offence are to be treated as being instituted in the United Kingdom in the circumstances set out in reg 37(6) (see PARA 401): reg 40.

10 As to the meaning of 'Convention' see PARA 367 note 6.

11 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 39(2)(b). As to the Secretary of State see PARA 58.

12 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 39(3).

13 le under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 39(2).

14 le under the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 37(3)(c): see PARA 401.

15 Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 39(4).

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(iii) Dangerous or Noxious Liquid Substances in Bulk

404. Application of provisions.

The following provisions¹ apply to:

- 729 (1) all ships² carrying in bulk³ noxious liquid substances⁴ or unassessed liquid substances⁵;
- 730 (2) all chemical tankers⁶ carrying dangerous substances⁷ in bulk; and
- 731 (3) all oil tankers⁸ carrying pollution hazard substances⁹ in bulk¹⁰;

and those provisions apply to ships which are:

- 732 (a) United Kingdom ships, wherever they may be;
- 733 (b) other ships while they are within United Kingdom waters¹¹ or, in relation to the provisions as to discharge of cargo tanks¹² so far as they relate to the discharge or washing of tanks which have carried noxious liquid substances or pollution hazard substances, subject to the provisions relating to inspection and detention¹³ and the restriction on jurisdiction over offences outside United Kingdom limits¹⁴, while they are in controlled waters¹⁵ or any other waters which are sea¹⁶.

In the case of a ship registered in a state which is not a party to the SOLAS¹⁷ or the MARPOL¹⁸ Conventions, the following provisions¹⁹ do not apply by reason of being in United Kingdom waters if she would not have been there but for stress of weather or any circumstances which could not have been prevented by the owner, the master or the charterer, if any²⁰.

¹ I.e. the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010: see PARA 405 et seq.

² For these purposes, 'ship' means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, hovercraft, submersibles and floating craft and also fixed or floating platforms except when they are actually engaged in exploration or exploitation of the sea bed or associated offshore processing of sea bed mineral resources: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1).

³ For these purposes, 'in bulk' means directly and without intermediate form of containment in a tank forming an integral part of, or permanently located in or on, a ship: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1).

⁴ For these purposes, 'noxious liquid substance' means a substance listed as such in either MEPC Circular 2/CIRC.1 or a Category A, B, C or D substance: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). 'MEPC Circular' means a circular of that description issued by the Marine Environment Protection Committee of the International Maritime Organisation: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). Any reference to an MEPC Circular includes any amendments adopted by the IMO which are considered by the Secretary of State to be relevant from time to time and are specified in a Merchant Shipping Notice: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(2)(d) (amended by SI 2004/930). 'IMO' means the International Maritime Organisation (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13): Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). 'Merchant Shipping Notice' means a Notice described as such and issued by the Maritime and

Coastguard Agency, and any reference to a particular Merchant Shipping Notice includes a reference to any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: reg 2(1) (definition added by SI 2004/303). See also the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(2)(g); and PARA 410. 'Maritime and Coastguard Agency' means the Maritime and Coastguard Agency, an executive agency of the Department for Transport: reg 2(1) (definition added by SI 2004/930). The Agency's website was, at the date at which this volume states the law, www.mcga.gov.uk. 'Residual mixture' means, in relation to any category of noxious liquid substances, ballast water, tank washings or other mixtures containing residues of a noxious liquid substance of such category, but excludes clean ballast: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). As to the Secretary of State see PARA 58.

'Category A substance', 'Category B substance', 'Category C substance' and 'Category D substance' mean respectively any substance listed and identified as falling within Category A, B, C or D in col 'c' in the IBC Code Chs 17, 18, and any substance which is provisionally assessed as a Category A, B, C or D substance; and any reference to any such substance includes a reference to any mixture containing such substance: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). 'Provisionally assessed' means, in relation to a substance of a particular category or a non-polluting substance or an oil-like substance, listed in MEPC Circular 2/CIRC.1 and therein identified as a substance falling into that category or as a non-polluting substance or as an oil-like substance, as the case may be: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). 'IBC Code' means the 1994 edition of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by the International Maritime Organisation as amended by Resolution MEPC 40(29), Resolution MSC 16(58), Resolution MEPC 79(43) and Resolution MEPC 90(45): Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1) (definition amended by SI 2004/930).

Any reference to the IBC Code includes any amendments adopted by the IMO which are considered by the Secretary of State to be relevant from time to time and are specified in a Merchant Shipping Notice: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(2)(b) (amended by SI 2004/930). In interpreting the IBC Code: (1) the provisions of the IBC Code having been made mandatory under the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 4(2), (3) (see PARA 405), the language thereof is to be construed accordingly; (2) references to the Administration are, in relation to United Kingdom ships, references to the Secretary of State and references to the Port Administration are, in relation to all ships in United Kingdom national waters, references to the Secretary of State; (3) any reference to the 1974 SOLAS Convention is a reference to the SOLAS Convention as defined in the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010 (see note 17): reg 2(3).

'Non-polluting substance' means a substance listed in the IBC Code Ch 17 or 18 having against it in col 'c' the entry III: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). 'Oil-like substance' means a substance listed as such in either MEPC Circular 2/CIRC.1 or provisionally assessed as an oil-like substance: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1).

5 For these purposes, 'unassessed liquid substance' means a liquid substance which is neither a noxious liquid substance nor a non-polluting substance and is not oil as defined in the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (see PARA 365 note 8): Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1).

6 For these purposes, 'chemical tanker' means a self-propelled cargo ship constructed or adapted and used for the carriage in bulk of any liquid substance listed in the IBC Code Ch 17 but does not include an offshore support vessel or a dry cargo ship with deep tanks: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). 'Constructed' means the date when the keel of a ship is laid or the building is at a similar stage of construction; and 'similar stage of construction' means the stage at which (1) construction identifiable with a specific ship begins; and (2) assembly of that ship has commenced, comprising at least 50 tonnes or 1% of the estimated mass of all structural material, whichever is the less: reg 2(1).

7 For these purposes, 'dangerous substance' means a substance listed in the IBC Code Ch 17 having against it in col 'd' an entry 'S': Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1).

8 For these purposes, 'oil tanker' means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes a combination carrier when it is carrying a cargo or part cargo of oil in bulk: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1).

9 For these purposes, 'pollution hazard substance' means a substance listed in the IBC Code Ch 17 having against it in col 'd' an entry 'P': Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1).

10 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 3(1)(a). Regulation reg 3(1)(a) is subject to reg 3(1)(b) (see the text and notes 11-16): reg 3(1)(a).

11 As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

12 Ie the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5: see PARA 406.

13 Ie the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15: see PARA 419.

14 Ie the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 16: see PARA 418.

15 For these purposes, 'controlled waters' means the waters designated as controlled waters by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996, SI 1996/2128 (amended by SI 1997/506) (see PARA 363 note 2): Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1).

16 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 3(1)(b).

17 For these purposes, 'SOLAS Convention' means the International Convention for the Safety of Life at Sea 1974 (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874), with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277): Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). Any reference to the SOLAS Convention includes any amendments adopted by the IMO which are considered by the Secretary of State to be relevant from time to time and are specified in a Merchant Shipping Notice: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(2)(f) (amended by SI 2004/930).

18 For these purposes, 'MARPOL Convention' means the International Convention for the Prevention of Pollution from Ships (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748), with its Protocols, Annex II (but no other Annex) and appendices thereto, as amended by the 1978 Protocol to that Convention and includes all the amendments adopted by the IMO up to 11 October 2002: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1) (definition amended by SI 2004/930). Any reference to the MARPOL Convention includes any amendments adopted by the IMO which are considered by the Secretary of State to be relevant from time to time and are specified in a Merchant Shipping Notice: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(2)(e) (amended by SI 2004/303).

19 Ie except for the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5 (see PARA 406), reg 14 (see PARA 418), reg 16 (see PARA 418) and reg 17 (see PARA 419).

20 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 3(2). As to a transitional provision see reg 3A (added by SI 2004/930).

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405. Construction, equipment and operation.

Every ship¹ carrying in bulk² noxious liquid substances³ or unassessed liquid substances⁴ must comply with the relevant provisions⁵.

Except as provided in heads (2) and (3) below, chemical tankers⁶ constructed⁷ before 1 July 1986 must be constructed, fitted, equipped, arranged and operated in accordance with those requirements of the BCH Code⁸ relevant to it⁹.

Every ship specified in head (1), (2) or (3) below must be constructed, equipped and operated in accordance with those requirements of the IBC Code¹⁰ relevant to it:

- 734 (1) chemical tankers constructed on or after 1 July 1986;
- 735 (2) ships converted to being chemical tankers on or after that date except oil tankers¹¹:
- 105
 - 32. (a) which were built before that date;
 - 33. (b) which are converted for the purpose of carrying pollution hazard substances¹² only;
 - 34. (c) the conversion of which consists only of modifications necessary for compliance with the BCH Code¹³; and
- 106
 - 736 (3) to the extent that the Secretary of State considers reasonable and practicable, chemical tankers which were constructed before 1 July 1986 but undergo repairs, alterations and modifications of a major character on or after that date¹⁴.

Where a chemical tanker is constructed or adapted to carry substances listed in the IGC Code¹⁵, then, to the extent that the requirements of the IBC and IGC Codes are inconsistent, the requirements of the IGC Code prevail¹⁶.

In every chemical tanker constructed on or after 1 July 1986 the pumping and piping arrangements serving any tank designated for the carriage of a Category B substance¹⁷ or a Category C substance¹⁸ must be such that they comply with the specified requirements¹⁹.

1 As to the meaning of 'ship' see PARA 404 note 2.

2 As to the meaning of 'in bulk' see PARA 404 note 3.

3 As to the meaning of 'noxious liquid substance' see PARA 404 note 4.

4 As to the meaning of 'unassessed liquid substance' see PARA 404 note 5.

5 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 4(1). The relevant provisions are those specified in Merchant Shipping Notice NLS1 Sch 1: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 4(1). As to the meaning of 'Merchant Shipping Notice' see PARA 404 note 4.

6 As to the meaning of 'chemical tanker' see PARA 404 note 6.

7 As to the meaning of 'constructed' see PARA 404 note 6.

8 For these purposes, 'BCH Code' means the 1993 edition of the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by the International Maritime Organisation as amended by Resolution MEPC 41(29) and Resolution MSC 18(58), Resolution MEPC 80(43) and Resolution MEPC 91(45): Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1) (definition amended by SI 2004/930). Any reference to the BCH Code includes any amendments adopted by the International Maritime Organisation which are determined by the Secretary of State to be relevant from time to time and are specified in a Merchant Shipping Notice: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(2)(a) (amended by SI 2004/930). In interpreting the BCH Code: (1) the provisions of the BCH Code having been made mandatory under the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 4(2), (3) (see PARA 405), the language thereof is to be construed accordingly; (2) references to the Administration are, in relation to United Kingdom ships, references to the Secretary of State and references to the Port Administration are, in relation to all ships in United Kingdom national waters, references to the Secretary of State; (3) any reference to the 1974 SOLAS Convention is a reference to the SOLAS Convention as defined in the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010 (see PARA 404 note 17); reg 2(3). As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13. As to the Secretary of State see PARA 58.

9 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 4(2).

10 As to the meaning of 'IBC Code' see PARA 404 note 4.

11 As to the meaning of 'oil tanker' see PARA 404 note 8.

12 As to the meaning of 'pollution hazard substance' see PARA 404 note 9.

13 Ie for compliance with the BCH Code Ch VA.

14 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 4(3).

15 Ie listed in the IGC Code Ch 19, whether or not such substances are listed in the IBC Code Ch 17. For these purposes, 'IGC Code' means the 1993 edition of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, published by the International Maritime Organisation: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). Any reference to the IGC Code includes any amendments adopted by the International Maritime Organisation which are considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(2)(c) (amended by SI 2004/930).

16 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 4(4).

17 As to the meaning of 'Category B substance' see PARA 404 note 4.

18 As to the meaning of 'Category C substance' see PARA 404 note 4.

19 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 4(5).

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406. Discharge of cargo tanks.

The discharge of any noxious liquid substance¹ into the sea is prohibited, except where otherwise² permitted³.

Tanks must be washed or pre-washed, and the tank washings must be dealt with, in accordance with the prescribed requirements⁴.

1 As to the meaning of 'noxious liquid substance' see PARA 404 note 4.

2 Ie except where permitted by Merchant Shipping Notice NLS1 Sch 2. As to the meaning of 'Merchant Shipping Notice' see PARA 404 note 4.

3 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5(a).

4 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5(b). The prescribed requirements are those specified in Merchant Shipping Notice NLS1 Sch 2: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5(b).

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407. Loading and carriage in bulk of dangerous or noxious liquid substances.

No ship¹ must load in bulk², or carry in bulk, any dangerous³ or noxious liquid⁴ substances or substances to a tripartite agreement⁵ unless:

- 737 (1) there is in force in respect of that ship and that substance a valid NLS Certificate⁶, BCH Code Certificate⁷ or IBC Code Certificate⁸ (as applicable) issued and indorsed in accordance with the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996⁹ and the loading and carriage of that substance is in accordance with the terms of that certificate; or
- 738 (2) either the Secretary of State¹⁰ or the government of a state party to the SOLAS¹¹ or MARPOL Conventions has given written permission for its carriage and any conditions subject to which that permission was given are complied with; or
- 739 (3) if the substance is an oil-like substance¹², there is in force in respect of the ship a valid IOPP Certificate¹³ or a UKOPP Certificate¹⁴ suitably indorsed for the substance in question, the loading and carriage of that substance is in accordance with the terms of that certificate and if of Category C¹⁵ or D¹⁶ it is handled and carried in accordance with the specified requirements¹⁷.

1 As to the meaning of 'ship' see PARA 404 note 2.

2 As to the meaning of 'in bulk' see PARA 404 note 3.

3 As to the meaning of 'dangerous substance' see PARA 404 note 7.

4 As to the meaning of 'noxious liquid substance' see PARA 404 note 4.

5 For these purposes, 'tripartite agreement' means an agreement between administrations for the carriage of unassessed liquid substances in accordance with MEPC Circular 265: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). As to the meaning of 'unassessed liquid substance' see PARA 404 note 5; and as to the meaning of 'MEPC Circular' see PARA 404 note 4.

6 For these purposes, 'NLS Certificate' means an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk which certifies compliance with Annex II: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1) (definition added by SI 2004/930). 'Annex II' means Annex II of the MARPOL Convention (which sets out regulations for the control of pollution by noxious liquid substances): Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). As to the meaning of 'MARPOL Convention' see PARA 404 note 18.

7 For these purposes, 'BCH Code Certificate' means a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk which certifies compliance with the requirements of the BCH Code: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1) (definition substituted by SI 2004/930). As to the meaning of 'BCH Code' see PARA 405 note 8.

8 For these purposes, 'IBC Code Certificate' means an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, which certifies compliance with the requirements of the IBC Code: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1) (definition substituted by SI 2004/930). As to the meaning of 'IBC Code' see PARA 404 note 4.

9 Ie in accordance with the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010.

10 As to the Secretary of State see PARA 58.

11 As to the meaning of 'SOLAS Convention' see PARA 404 note 17.

12 As to the meaning of 'oil-like substance' see PARA 404 note 4.

13 For these purposes, 'IOPP Certificate' means an International Oil Pollution Prevention Certificate issued in accordance with Annex I of the MARPOL Convention and, in the case of a United Kingdom ship, pursuant to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (see PARA 367): Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1).

14 For these purposes, 'UKOPP Certificate' means a United Kingdom Oil Pollution Prevention Certificate issued pursuant to the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (see PARA 367): Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1).

15 As to the meaning of 'Category C substance' see PARA 404 note 4.

16 As to the meaning of 'Category D substance' see PARA 404 note 4.

17 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 6 (amended by SI 2004/930). The requirements so prescribed are those specified in Merchant Shipping Notice NLS1 Sch 3: see the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 6. As to the meaning of 'Merchant Shipping Notice' see PARA 404 note 4.

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408. Procedures and Arrangements Manual.

Every ship¹ carrying noxious liquid substances² must be provided with a Procedures and Arrangements Manual complying with IMO Standards³.

Such a manual must be approved, in the case of a United Kingdom ship, by the Secretary of State or, in the case of a ship registered in a state party to the MARPOL Convention⁴, by or on behalf of the government of that state⁵.

The Procedures and Arrangements Manual must:

- 740 (1) be kept on board the ship in such a place as to be readily available for inspection⁶;
- 741 (2) in the case of a United Kingdom ship, be in English and, in the case of any other ship, be in, or include a translation into, English or French⁷.

1 As to the meaning of 'ship' see PARA 404 note 2.

2 As to the meaning of 'noxious liquid substance' see PARA 404 note 4.

3 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 7(1). For these purposes, 'IMO Standards' means the Standards for Procedures and Arrangements for the Discharge of Noxious Liquid Substances adopted by the Marine Environment Protection Committee of the International Maritime Organisation by Resolution MEPC 18(22) on 5 December 1985: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1). As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13.

As to the requirement to carry on board a marine pollution emergency plan for noxious liquid substances see PARA 410.

4 As to the meaning of 'MARPOL Convention' see PARA 404 note 18.

5 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 7(2). Any approval given pursuant to the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, must be given in writing and must specify the date when it is to come into force and the conditions, if any, on which it is given: reg 2(4)(b).

6 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 7(3).

7 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 7(4).

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409. Cargo record book.

Every ship¹ carrying noxious liquid substances² must be provided with a cargo record book in the prescribed form³.

Whenever any of the following operations takes place in respect of any noxious liquid substance, a record of the operation must be made in the cargo record book in relation to each tank affected by the operation:

- 742 (1) loading of cargo;
- 743 (2) internal transfer of cargo;
- 744 (3) unloading of cargo;
- 745 (4) cleansing of cargo tanks;
- 746 (5) ballasting of cargo tanks;
- 747 (6) discharge of ballast from cargo tanks;
- 748 (7) disposal of residues to reception facilities;
- 749 (8) discharge of residues into the sea⁴;
- 750 (9) removal of residues by ventilation⁵.

In the event that any emergency discharge⁶ of any noxious liquid substance or mixture containing such a substance is made or occurs, an entry must be made without delay in the cargo record book stating the circumstances of, and the reason for, the discharge⁷.

The entries in the cargo record book, in the case of a United Kingdom ship, must be in English and, in the case of any other ship, in the official language of the state in which the ship is registered, and, where that language is neither English nor French, in English or French⁸. Each entry must be signed by the officer or officers in charge of the operation and each page must be signed by the master⁸.

The cargo record book must be kept in such a place as to be readily available for inspection and, except in the case of unmanned ships under tow, must be kept on board the ship⁹. It must be retained on board the ship for a period of three years after the last entry in it has been made¹⁰.

1 As to the meaning of 'ship' see PARA 404 note 2.

2 As to the meaning of 'noxious liquid substance' see PARA 404 note 4.

3 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 8(1). For the prescribed form of cargo record book see Annex II. As to the meaning of 'Annex II' see PARA 407 note 6.

4 In accordance with Merchant Shipping Notice NLS1 Sch 2. As to the meaning of 'Merchant Shipping Notice' see PARA 404 note 4.

5 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 8(2).

6 In the kind referred to in Merchant Shipping Notice NLS1 Sch 2 para 15.

7 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 8(3).

8 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 8(4).

9 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 8(5).

10 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 8(5).

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410. Marine pollution emergency plan for noxious liquid substances.

Every ship¹ of 150 GT² and above certified to carry noxious liquid substances in bulk must carry on board a shipboard marine pollution emergency plan for noxious liquid substance³.

Such a plan must (1) be approved in the case of a United Kingdom ship by the appropriate Certifying Authority⁴ for that ship, and in the case of any other ship be approved by or on behalf of the administration of the country in which the ship is registered; (2) be in accordance with specified guidelines⁵; (3) be written in a language or languages understood by the master and officers of the ship; and (4) consist at least of (a) the procedure to be followed by the master or other persons having charge of the ship to report a noxious liquid substance pollution incident⁶, based on the guidelines developed by the International Maritime Organisation⁷; (b) the list of authorities or persons to be contacted in the event of a noxious liquid substance pollution incident; (c) a detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of noxious liquid substances following the incident; and (d) the procedures and point of contact on the ship for co-ordinating shipboard action with national and local authorities in combating the pollution⁸.

1 As to the meaning of 'ship' see PARA 404 note 2.

2 'GT' means gross registered tonnage; and the gross registered tonnage of a ship having alternative gross registered tonnages is taken to be the larger of those tonnages: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1) (definition added by SI 2004/930).

3 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 8A(1) (reg 8A added by SI 2004/930).

4 'Appropriate Certifying Authority' means the Secretary of State or any person authorised by the Secretary of State and includes in particular (if so authorised) Lloyd's Register of Shipping, the British Committee of Bureau Veritas, the British Committee of Det Norske Veritas, the British Committee of Germanischer Lloyd, the British Technical Committee of the American Bureau of Shipping and the British Committee of Registro Italiano Navale: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1) (definition added by SI 2004/930).

5 I.e. the IMO Guidelines for the Development of Shipboard Marine Pollution Emergency Plans, IMO Publication IMO-586-E 2001 Edition. Any reference to the IMO Guidelines now includes any amendments to those documents adopted by the International Maritime Organisation which are considered by the Secretary of State to be relevant from time to time and are specified in a Merchant Shipping Notice: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(2)(g) (amended by SI 2004/930). As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13. As to the meaning of 'Merchant Shipping Notice' see PARA 404 note 4.

6 I.e. as required in the MARPOL Convention art 8, Protocol I. As to the meaning of 'MARPOL Convention' see PARA 404 note 18.

7 As to IMO Guidelines see note 5.

8 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 8A(2) (as added: see note 3). In the case of ships to which the MARPOL Convention Annex I reg 26 also applies, the plan may be combined with the shipboard oil pollution emergency plan required under the MARPOL Convention Annex I reg 26, and in this case the title of the plan must be 'Shipboard Marine Pollution Emergency Plan': Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 8A(3) (as so added).

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411. Survey requirements.

A United Kingdom¹ ship² carrying one or more noxious liquid substances³ in bulk must be subject to the following surveys: (1) before the ship is put in service, or before a certificate⁴ is first issued in relation to the ship, an initial survey; (2) within five years of the first issue of a certificate, and thereafter at intervals which⁵ must be no more than five years, a renewal survey; (3) within three months before or after the second or third anniversary date⁶ of a certificate being issued, an intermediate survey; (4) within three months before or after each anniversary date of the issue of the ship's certificate, other than when an intermediate survey is required to be carried out within that period, an annual survey; and (5) after a repair resulting from prescribed⁷ investigations, or whenever any important repairs or renewals are made, an additional survey⁸.

1 As to the meaning of 'United Kingdom' see PARA 1 note 2.

2 As to the meaning of 'ship' see PARA 404 note 2.

3 As to the meaning of 'noxious liquid substance' see PARA 404 note 4.

4 In relation to a United Kingdom chemical tanker constructed in compliance with the requirements of the IBC Code, the relevant certificate is an IBC Code Certificate: see the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9(2) (reg 9 substituted by SI 2004/930). As to the meaning of 'IBC Code' see PARA 404 note 4. As to the meaning of 'IBC Code Certificate' see PARA 407 note 8. In relation to a United Kingdom chemical tanker constructed in compliance with the requirements of the BCH Code, the relevant certificate is a BCH Code Certificate: see the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9(3) (as so substituted). As to the meaning of 'BCH Code' see PARA 405 note 8. As to the meaning of 'BCH Code Certificate' see PARA 407 note 7. In any other case the relevant certificate is an NLS Certificate: see the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9(1) (as so substituted). As to the meaning of 'NLS Certificate' see PARA 407 note 6.

5 Subject to the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11A(3) (see PARA 413) and reg 11B(3)-(6) (see PARA 414).

6 'Anniversary date' means the day and month of each year which corresponds to the date of expiry of the appropriate certificate: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1) (definition added by SI 2004/930).

7 Ie by the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 10(4): see PARA 415.

8 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9 (as substituted: see note 4). In relation to a United Kingdom chemical tanker constructed in compliance with the requirements of the IBC Code, the relevant surveys are those set out in the IBC Code section 1.5.2: see the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9(2) (as so substituted). In relation to a United Kingdom chemical tanker constructed in compliance with the requirements of the BCH Code, the relevant surveys are those set out in the BCH Code section 1.6.2: see the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9(3) (as so substituted). In any other case the relevant surveys are those set out in the MARPOL Convention Annex II reg 10(1)(a)-(e): see the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9(1) (as so substituted).

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412. Issue and indorsement of certificates.

Where the appropriate Certifying Authority¹ is satisfied after the completion of an initial or renewal survey², that the requirements of the MARPOL Convention Annex II³, the IBC Code⁴ or the BCH Code⁵, as the case may be, are being complied with, the Authority must issue (1) in the case of a United Kingdom chemical tanker constructed in compliance with the requirements of the IBC Code, an IBC Code Certificate⁶; (2) in the case of a United Kingdom chemical tanker constructed in compliance with the requirements of the BCH Code, a BCH Code Certificate⁷; or (3) in any other case, an NLS Certificate⁸.

Where the appropriate Certifying Authority is satisfied after the completion of an intermediate or annual survey⁹ that the requirements of the MARPOL Convention Annex II, the IBC Code or the BCH Code, as the case may be, are being complied with, the Authority must indorse the applicable certificate¹⁰.

The Secretary of State¹¹ may, through a proper officer or otherwise, request the administration of a state which is a party to the MARPOL Convention or the administration of a contracting government to the SOLAS Convention¹² to carry out a survey of a United Kingdom ship and, if satisfied that the survey has been completed in accordance with specified requirements¹³, to (a) issue or authorise the issue of an NLS Certificate, an IBC Code Certificate or a BCH Code Certificate, as appropriate, to the ship, or to indorse or authorise the indorsement of such a certificate in accordance with the relevant requirements; (b) include in the certificate a statement to the effect that it has been issued at the request of the Secretary of State; and (c) transmit a copy of the survey report and the certificate to the Secretary of State as soon as possible¹⁴.

The Secretary of State may, at the request of the administration of a party to the MARPOL Convention, survey a ship registered in that state and, if satisfied that the requirements of Annex II are complied with, issue or authorise the issue to the ship of an NLS Certificate, or indorse or authorise the indorsement of such a certificate¹⁵. The Secretary of State may, at the request of the administration of a party to the SOLAS Convention, survey a ship registered in that state and, if satisfied that the requirements of the IBC Code or the BCH Code are complied with, issue or authorise the issue to the ship of an IBC Certificate or a BCH Code Certificate, as appropriate, or indorse or authorise the indorsement of such a certificate¹⁶. The Secretary of State must include or have included in any certificate so issued or indorsed a statement to the effect that it has been issued or indorsed at the request of the administration, and must transmit a copy of the survey report and the certificate to that administration as soon as possible¹⁷.

1 As to the meaning of 'appropriate Certifying Authority' see PARA 410 note 4.

2 ie one carried out in accordance with the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9: see PARA 411.

3 As to the meaning of 'MARPOL Convention' see PARA 404 note 18. As to the meaning of 'Annex II' see PARA 407 note 6.

4 As to the meaning of 'IBC Code' see PARA 404 note 4.

5 As to the meaning of 'BCH Code' see PARA 405 note 8.

6 As to the meaning of 'IBC Code Certificate' see PARA 407 note 8.

7 As to the meaning of 'BCH Code Certificate' see PARA 407 note 7.

8 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11(1) (reg 11 substituted by SI 2004/930). As to the meaning of 'NLS Certificate' see PARA 407 note 6. If a ship which was previously under the flag of another state becomes a United Kingdom ship, an appropriate Certifying Authority must issue (1) an NLS Certificate only if it is fully satisfied that the ship is in compliance with the requirements of the MARPOL Convention Annex II reg 10(3)(a), (b); (2) an IBC Code Certificate only if it is fully satisfied that the ship is in compliance with the requirements of the IBC Code section 1.5.3.1 and 1.5.3.2; and (3) a BCH Code Certificate only if it is fully satisfied that the ship is in compliance with the requirements of the BCH Code section 1.6.3.1 and 1.6.3.2: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11(3) (as so substituted). See also note 17. As to the meaning of 'United Kingdom' see PARA 1 note 2. As to the meaning of 'ship' see PARA 404 note 2. As to the duration and validity of certificates see PARA 413. As to the extension of the validity of certificates see PARA 414.

9 The one carried out in accordance with the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9: see PARA 411.

10 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11(2) (as substituted: see note 8). See also note 17.

11 As to the Secretary of State see PARA 58.

12 As to the meaning of 'SOLAS Convention' see PARA 404 note 17.

13 In the case of an NLS Certificate, the requirements are those of the MARPOL Convention Annex II; in the case of an IBC Code Certificate, the requirements are those of the IBC Code section 1.5; and in the case of a BCH Code Certificate, the requirements are those of the BCH Code section 1.6.

14 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11(4) (as substituted: see note 8). A certificate issued or indorsed in accordance with reg 11(4) has the same force and receives the same recognition as a certificate issued or indorsed in accordance with reg 11(1)-(3): reg 11(5) (as so substituted).

15 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11(6) (as substituted: see note 8). See also note 17.

16 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11(7), (8) (as substituted: see note 8). See also note 17.

17 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11(9) (as substituted: see note 8). A certificate issued or indorsed in accordance with reg 11(6), (7) or (8) has effect as if issued or indorsed by the administration which requested the survey of the ship to be carried out: reg 11(10) (as so substituted). A certificate issued or indorsed in accordance with reg 11(1)-(3), (6)-(10) must be drawn up in a form corresponding (1) in the case of an NLS Certificate, to the model given in the MARPOL Convention Annex II Appendix V; (2) in the case of an IBC Code Certificate, to the model given in Resolution MSC16(58) Appendix; and (3) in the case of a BCH Code Certificate, to the model given in Resolution MSC18(58) Appendix: SI 1996/3010 reg 11(11) (as so substituted).

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413. Duration and validity of certificates.

Subject to the following provisions, an NLS Certificate¹, IBC Code Certificate² or BCH Code Certificate³ must be issued (1) on the date of the completion of the relevant survey; (2) as being valid from the date of issue; and (3) for a period of validity not exceeding five years⁴.

Where a renewal survey⁵ has been completed within a period of three months before the expiry of the existing certificate, the new certificate must be issued for a period of validity not exceeding five years from the date of expiry of the existing certificate⁶. Where a renewal survey has been completed after the expiry of an NLS Certificate, IBC Code Certificate or BCH Code Certificate, the new certificate must be issued as being valid from the date of expiry of the existing certificate⁷.

Where an annual or intermediate survey⁸ is completed before the period prescribed⁹ for such a survey (a) the anniversary date¹⁰ shown on the NLS Certificate, IBC Code Certificate or BCH Code Certificate must be amended by indorsement to a date which must not be more than three months later than the date on which the survey was completed; (b) subsequent annual or intermediate surveys must be completed at the prescribed¹¹ intervals using the new anniversary date; and (c) the expiry date may remain unchanged provided one or more annual or intermediate surveys, as appropriate, are carried out so that the maximum intervals between the surveys are not exceeded¹².

An NLS Certificate, IBC Code Certificate or BCH Code Certificate ceases to be valid (i) if its period of validity has been exceeded and the certificate has not been extended by the Certifying Authority¹³ or the period of any such extension has expired; (ii) if the relevant surveys have not been completed within the specified periods, and the certificate indorsed¹⁴; or (iii) on transfer of the ship to the flag of another state¹⁵.

1 As to the meaning of 'NLS Certificate' see PARA 407 note 6.

2 As to the meaning of 'IBC Code Certificate' see PARA 407 note 8.

3 As to the meaning of 'BCH Code Certificate' see PARA 407 note 7.

4 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11A(1) (reg 11A added by SI 2004/930).

5 Ie one required under the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9: see PARA 411.

6 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11A(2) (as added: see note 4).

7 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11A(3) (as added: see note 4). This provision is subject to reg 11B(6): see PARA 414.

8 As to annual and intermediate surveys see PARA 411.

9 Ie by the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9: see PARA 411.

10 As to the meaning of 'anniversary date' see PARA 411 note 6.

11 le by the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9: see PARA 411.

12 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11A(4) (as added: see note 4).

13 le in accordance with the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11B: see PARA 414.

14 le in accordance with the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11: see PARA 412.

15 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11A(5) (as added: see note 4).

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414. Extension of validity of certificates.

Where an NLS Certificate¹, IBC Code Certificate² or BCH Code Certificate³ has been issued for a period of validity of less than five years and the surveys required⁴ have been completed, the appropriate Certifying Authority⁵ may extend the validity of that certificate so that the certificate is valid for a maximum period of five years⁶.

Where a renewal survey⁷ has been completed before the expiry of an NLS Certificate, IBC Code Certificate or BCH Code Certificate, as the case may be, but the new certificate cannot be issued or placed on board the ship before the expiry of the existing certificate, the appropriate Certifying Authority may indorse the existing certificate as valid for a period not exceeding five months from the expiry date of the existing certificate⁸. Where a renewal survey has not been completed before the expiry of an NLS Certificate, IBC Code Certificate or BCH Code Certificate, as the case may be, and at the time of expiry the ship is not in a port in which it is to be surveyed, the appropriate Certifying Authority may, where it appears to it proper and reasonable to do so, extend the validity of the certificate, solely for the purpose of allowing the ship to complete its voyage to its port of survey, for a period of no more than three months⁹.

Where no other extension has been granted, the appropriate Certifying Authority may extend the validity of the NLS Certificate, IBC Code Certificate or BCH Code Certificate, as the case may be, of a ship used solely on short international voyages¹⁰ for a period of no more than one month¹¹.

In special circumstances as determined by the Maritime and Coastguard Agency¹², where a renewal survey has been completed (1) after the expiry of the NLS Certificate, IBC Code Certificate or BCH Code Certificate, as the case may be; (2) during the period for which the validity of the NLS Certificate, IBC Code Certificate or BCH Code Certificate, as the case may be, has been extended¹³; or (3) during the period for which the validity of the NLS Certificate, IBC Code Certificate or BCH Code Certificate, as the case may be, has been extended¹⁴, the new certificate may be issued as being valid from the date of the completion of the renewal survey¹⁵.

1 As to the meaning of 'NLS Certificate' see PARA 407 note 6.

2 As to the meaning of 'IBC Code Certificate' see PARA 407 note 8.

3 As to the meaning of 'BCH Code Certificate' see PARA 407 note 7.

4 I.e. under the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9: see PARA 411.

5 As to the meaning of 'appropriate Certifying Authority' see PARA 410 note 4.

6 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11B(1) (reg 11B added by SI 2004/930).

7 I.e. one required under the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 9: see PARA 411.

8 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11B(2) (as added: see note 6).

9 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11B(3) (as added: see note 6).

10 'Short international voyage' means a voyage from a port in one country to which the Convention applies to a port in another country, or conversely (1) in the course of which a ship is not more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety; and (2) which does not exceed 600 nautical miles in distance between the last port of call in the country in which the voyage begins and the last port of call in the scheduled voyage before beginning a return voyage, and which on the return voyage does not exceed 600 nautical miles in distance between the port of call in which the ship commences its return voyage and the first port of call in the country in which the voyage began, and for this purpose no account is taken of any deviation by a ship from her intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 2(1) (definition added by SI 2004/930).

11 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11B(4) (as added: see note 6). An extension of validity under reg 11B(3) or (4) is disregarded for the purposes of determining the date of expiry of an existing NLS Certificate, IBC Code Certificate or BCH Code Certificate, as the case may be, in accordance with reg 11A(2) or (3) (see PARA 413): reg 11B(5) (as so added).

12 As to the meaning of 'Maritime and Coastguard Agency' see PARA 404 note 4.

13 Ie in accordance with the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11B(3).

14 Ie in accordance with the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11B(4).

15 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 11B(6) (as added: see note 6).

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415. Responsibilities of owner and master.

The owner and master of every ship must ensure that (1) the condition of the ship and its equipment is maintained to conform with specified requirements¹ so as to ensure that the ship in all respects will remain fit to proceed to sea without presenting an unreasonable threat of harm to the safety of ships or persons on them, or an unreasonable threat of harm to the marine environment²; (2) after any survey³ of the ship has been completed, no change is made in the structure, equipment, systems, fittings, arrangements or material covered by the survey, without the approval of the appropriate Certifying Authority⁴, or of the administration of the state which carried out the survey for that ship, except by direct replacement⁵; and (3) whenever an accident occurs to a ship or a defect is discovered which, in either case, substantially affects the integrity of the ship or the efficiency or completeness of its equipment (a) if the ship is a United Kingdom ship, it is reported at the earliest opportunity to the Secretary of State and to any other appropriate Certifying Authority; (b) if the ship is a United Kingdom ship in a port outside the United Kingdom, it is also reported to the proper officer and to the appropriate authorities of the country in which the port is situated; and (c) if the ship is a non-United Kingdom ship in a port in the United Kingdom, it is reported at the earliest opportunity to the Secretary of State⁶.

Whenever an accident or defect is reported under the above provisions to the Secretary of State, a Certifying Authority or the proper officer, the Secretary of State, Certifying Authority or proper officer, as the case may be, must cause investigations to be initiated to determine whether or not a survey by a surveyor is necessary, and, if a survey is found to be necessary, must require that survey to be carried out⁷.

1 In the case of a United Kingdom ship, or any ship surveyed pursuant to the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, the requirements are those of those Regulations; in the case of a non-United Kingdom ship, the requirements are those of those Annex II, the IBC Code or the BCH Code, as the case may be: Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 10(1) (reg 10 substituted by SI 2004/930). As to the meaning of 'United Kingdom' see PARA 1 note 2. As to the meaning of 'ship' see PARA 404 note 2. As to the meaning of 'MARPOL Convention' see PARA 404 note 18. As to the meaning of 'IBC Code' see PARA 404 note 4. As to the meaning of 'BCH Code' see PARA 405 note 8. As to the meaning of 'Annex II' see PARA 407 note 6.

2 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 10(1) (as substituted: see note 1).

3 The one required by the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, or by Annex II, the IBC Code or the BCH Code, as the case may be.

4 As to the meaning of 'appropriate Certifying Authority' see PARA 410 note 4.

5 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 10(2) (as substituted: see note 1).

6 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 10(3) (as substituted: see note 1).

7 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 10(4) (as substituted: see note 1).

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416. Equivalents.

Where there is a requirement¹ that a particular fitting, material, appliance, apparatus, item of equipment or type thereof should be fitted or carried in a ship², or that any particular provision should be made, or any procedure or arrangement should be complied with, the Secretary of State³ must allow any other fitting, material, appliance, apparatus, item of equipment or type thereof to be fitted or carried, or any other provision, procedure or arrangement to be made in that ship, if he is satisfied by trial thereof or otherwise that such fitting, material, appliance, apparatus, item of equipment or type thereof, or that any provision, procedure or arrangement is at least as effective as that required by the appropriate Regulations⁴.

The results of tests and certificates relating to them, carried out by an inspection and control body or a laboratory which is officially recognised in another member state of the European Union, offering independent and professional technical guarantees which are suitable and satisfactory must be considered equivalent⁵.

1 le in the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010: see PARA 404 et seq.

2 As to the meaning of 'ship' see PARA 404 note 2.

3 As to the Secretary of State see PARA 58.

4 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 12(1).

5 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 12(2).

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417. Exemptions.

The Secretary of State¹ may exempt any ship² or class or description of ship from any of the requirements of the provisions relating to dangerous or noxious substances in bulk³, subject to such conditions as he may specify, and may alter or cancel any exemption so granted⁴.

1 As to the Secretary of State see PARA 58.

2 As to the meaning of 'ship' see PARA 404 note 2.

3 I.e. the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010: see PARA 404 et seq.

4 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 13.

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418. Offences.

If there is any contravention of the provisions relating to dangerous or noxious substances in bulk¹ (other than of the provision relating to the discharge of cargo tanks²) the owner and master of the ship³ are each guilty of an offence punishable by a fine⁴.

If any noxious liquid substance⁵ is discharged from a ship in contravention of the relevant provision⁶ any person who causes or contributes to that discharge is guilty of an offence⁷ and liable on conviction to a fine⁸.

If there is any contravention of the provision about tank washing or prewashing⁹ in respect of a ship the owner and master of the ship are each guilty of an offence¹⁰ and liable on conviction to a fine¹¹.

It is a defence for a person charged with such an offence (other than a contravention of the provision in regard to the discharge of a noxious liquid substance¹²) to prove that he took all reasonable steps to ensure that the provisions in question were complied with¹³.

No proceedings for an offence of contravening the provisions relating to the discharge of cargo tanks¹⁴ by a ship which is not a United Kingdom¹⁵ ship, which relates to a discharge in the internal waters, territorial waters or exclusive zone of another state may be instituted unless:

- 751 (1) that state, the flag state or a state damaged or threatened by the discharge requests that proceedings be taken; or
- 752 (2) the discharge has caused or is likely to cause pollution in the internal waters, territorial sea or controlled waters of the United Kingdom¹⁶.

Where proceedings for an offence of contravening the provisions relating to the discharge of cargo tanks which is not a United Kingdom ship which relates to a discharge in the internal waters, territorial sea or exclusive economic zone of another state have been instituted but not concluded, and that state requests suspension of the proceedings, then:

- 753 (a) proceedings must be suspended;
- 754 (b) the Secretary of State must transmit all the evidence and court records and documents relating to the case to that state¹⁷.

It is a defence to a charge of contravening the provisions relating to the discharge of cargo tanks for the accused to show:

- 755 (i) that the ship is not a United Kingdom ship; and
- 756 (ii) the discharge took place outside United Kingdom waters and controlled waters; and
- 757 (iii) the ship was in a port in the United Kingdom at the time of institution of proceedings by reason only of stress of weather or other reason beyond the control of the master or charterer¹⁸.

1 le the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010: see PARA 404 et seq.

2 Ie other than a contravention of the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5: see PARA 406. See note 6.

3 As to the meaning of 'ship' see PARA 404 note 2.

4 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 14(1) (amended by SI 1998/1153). Each is punishable on conviction on indictment by a fine or on summary conviction by a fine not exceeding the statutory maximum: see the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 14(1). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

5 As to the meaning of 'noxious liquid substance' see PARA 404 note 4.

6 Ie in contravention of the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5(a): see PARA 406.

The Merchant Shipping Act 1995 s 143(6) (which provides for the service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under s 131) (see PARA 433) and s 146 (which provides for the enforcement and application of fines imposed for offences under Pt VI Ch 2 (ss 131-151)) (see PARA 435) apply to an offence for a contravention of the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5 as they apply to an offence under the Merchant Shipping Act 1995 s 131 (see PARA 425): Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 14(1B) (reg 14(1A), (1B) added by SI 1998/1153).

7 Ie the Merchant Shipping Act 1995 s 131(3) (see PARA 425) applies as it applies to an offence under s 131.

8 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 14(1ZA) (added by SI 2009/1210). Such person is punishable on summary conviction by a fine not exceeding £25,000 or on conviction on indictment by a fine: see the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 14(1ZA) (as so added).

9 Ie any contravention of the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5(b): see PARA 406. See note 6.

10 Ie the Merchant Shipping Act 1995 s 131(3) (see PARA 425) applies as it applies to an offence under s 131.

11 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 14(1A) (as added (see note 6); and amended by SI 2009/1210). Each is liable (1) on summary conviction, to a fine not exceeding £25,000; or (2) on conviction on indictment, to a fine: see the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 14(1A) (as so added and amended).

12 Ie a contravention of the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5(a): see PARA 406. See note 6.

13 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 14(2) (amended by SI 2009/1210).

14 Ie the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5: see PARA 406.

15 As to the meaning of 'United Kingdom' see PARA 1 note 2.

16 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 16(1). As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

17 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 16(2). As to the Secretary of State see PARA 58.

18 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 16(3).

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419. Inspection and detention.

A ship¹ is subject in any United Kingdom port to inspection by persons appointed by the Secretary of State².

The inspector may investigate any regulated operation³ if there are clear grounds for believing that the master or crew are not familiar with essential ship board procedures for preventing pollution by a specified substance⁴. In the event of any such inspection revealing deficiencies, the inspector must take such steps as he may consider necessary to ensure that the ship will not sail until the situation has been brought to order⁵.

In any case where:

- 758 (1) a ship does not comply with the requirements of the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996⁶;
- 759 (2) the steps to be taken by an inspector⁷ involve detention of the ship;
- 760 (3) an accident occurs to a non-United Kingdom ship, or a defect is discovered in a non-United Kingdom ship, either of which substantially affects the integrity of the ship or the efficiency or completeness of its equipment, and a full and proper report of that accident or defect has not been made to the appropriate authority for that ship; or
- 761 (4) within a reasonable period of a report being made of an accident to or defect in a non-United Kingdom ship the Secretary of State is not satisfied that action taken as respects that ship is sufficient to restore the integrity of the ship or the efficiency or completeness of its equipment,

the ship is liable to be detained⁸.

Where a ship other than a United Kingdom ship is detained under head (1) above, the Secretary of State must immediately inform the consul or diplomatic representative of the state whose flag the ship is entitled to fly or the appropriate maritime authorities of that state⁹.

1 Ie a ship to which the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, apply: see PARA 404 et seq. As to the meaning of 'ship' see PARA 404 note 2.

2 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15(1). As to the meaning of 'United Kingdom' see PARA 1 note 2. As to the Secretary of State see PARA 58.

3 Ie any operation regulated by the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010.

4 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15(2). The substances so specified are those referred to in reg 3(1)(a) (see PARA 404 heads (1)-(3)): reg 15(2).

5 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15(2).

6 Ie the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010. As to head (1) in the text see also note 8.

7 le under the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15(2): see the text and notes 3-5.

8 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15(3) (substituted by SI 2004/930). The Merchant Shipping Act 1995 s 284(1)-(6), (8) (which relates to the detention of a ship) (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1253) has effect in relation to that ship, as if for the words 'this Act' wherever they appear, there were substituted the words 'the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996': Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15(3) (as so substituted). The Merchant Shipping Act 1995 s 144(4)-(6) (which provides for the detention of ships for offences under s 131) (see PARA 434) applies to a detention of a ship under the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15(3)(a) (see head (1) in the text) in respect of an alleged contravention of reg 5 (see PARA 406) as if (1) for the words 'harbour master' wherever they appear there were substituted the words 'any person'; (2) for the words 'harbour authority' wherever they appear there were substituted the words 'Secretary of State'; and (3) in the Merchant Shipping Act 1995 s 144(4)(c)(i), (ii), for '£255,000' in both places where it occurs there were substituted '£30,000': Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15(5) (added by SI 1998/1153).

9 Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15(4).

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420. Suspension of proceedings at flag state request.

Where an offence of contravening the provisions relating to the discharge of cargo tanks¹ by a ship² which is not a United Kingdom ship, in relation to a discharge beyond the United Kingdom's territorial sea³, is alleged, any proceedings for such an offence must be suspended if the court is satisfied that the flag state has instituted proceedings corresponding to the proceedings in the United Kingdom in respect of the discharge, within six months of the institution of proceedings in the United Kingdom, except in a case where the discharge resulted in major damage to the United Kingdom or the Secretary of State certifies that the flag state has repeatedly disregarded its obligation to enforce effectively the requirements of the Convention in respect of its ships⁴.

Where proceedings instituted by the flag state have been brought to a conclusion, the suspended proceedings must be terminated⁵.

¹ See the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 5: see PARA 406.

² As to the meaning of 'ship' see PARA 404 note 2.

³ As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

⁴ Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 17(1), (2). As to the meaning of 'United Kingdom' see PARA 1 note 2. As to the Secretary of State see PARA 58.

⁵ Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 17(3).

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(iv) Waste Reception Facilities at Harbours

421. In general.

The Secretary of State may by regulations make such provision as he considers appropriate in relation to:

762 (1) the provision at harbours¹ in the United Kingdom of facilities for the reception of waste from ships ('waste reception facilities'); and

763 (2) the use of waste reception facilities provided at such harbours².

In making the regulations, the Secretary of State must take into account the need to give effect to provisions which are contained in any international agreement³ which has been ratified by the United Kingdom and which relate to waste reception facilities⁴.

1 As to the meaning of 'harbour' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49.

2 Merchant Shipping Act 1995 ss 130A(1), 130E (ss 130A, 130E added by the Merchant Shipping and Maritime Security Act 1997 s 5). The Merchant Shipping Act 1995 ss 130B-130D (see PARAS 422-424) make further provision with respect to the regulations that may be made under s 130A: s 130A(3) (as so added). As to the making of regulations generally see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65; and as to the Secretary of State's power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41. As to the Secretary of State see PARA 58. As to the meaning of 'United Kingdom' see PARA 1 note 2. As to the regulations made see the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003, SI 2003/1809; and see in particular reg 4 (requirement to provide adequate waste reception facilities), reg 5 (direction to provide adequate waste reception facilities), reg 12 (amended by SI 2009/1176) (delivery of ship-generated waste), the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003, SI 2003/1809, reg 16 (delivery of cargo residues) and reg 17 (amended by SI 2009/1176) (non-compliance or suspected non-compliance).

As to the powers of inspectors appointed under the Merchant Shipping Act 1995 s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 130A and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 130A applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 et seq.

3 Ie any international agreement mentioned in the Merchant Shipping Act 1995 s 128(1): see PARA 360.

4 Merchant Shipping Act 1995 s 130A(2) (as added: see note 2).

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422. Waste management plans.

The regulations¹ may make provision requiring a harbour authority² for a harbour³ in the United Kingdom:

- 764 (1) in such circumstances as may be prescribed⁴, to prepare a plan with respect to the provision and use of waste reception facilities⁵ at the harbour; and
- 765 (2) to submit the plan to the Secretary of State for approval⁶.

The regulations may make provision requiring a person:

- 766 (a) if directed to do so by the Secretary of State, to prepare a plan with respect to the provision and use of waste reception facilities at any terminals⁷ operated by him⁸ within a harbour which is in the United Kingdom and is specified in the direction; and
- 767 (b) to submit the plan to the Secretary of State for approval⁹.

The regulations may make provision with respect to the form and content of waste management plans¹⁰ and may in particular require such plans to include:

- 768 (i) proposals as to the information to be provided about waste reception facilities to those who are expected to use them;
- 769 (ii) proposals designed to ensure that adequate provision will be made for the disposal of waste deposited in waste reception facilities; and
- 770 (iii) proposals about how costs incurred in establishing and running waste reception facilities will be recovered¹¹.

The regulations may require a person preparing a waste management plan to have regard to such matters as the Secretary of State may prescribe or in a particular case direct¹².

The regulations may make provision as to the procedures to be followed in connection with waste management plans and may in particular:

- 771 (A) require a person preparing a waste management plan to consult such persons as the Secretary of State may prescribe or in a particular case direct;
- 772 (B) enable the Secretary of State to approve waste management plans with or without modification or to reject such plans;
- 773 (C) enable the Secretary of State, if he is satisfied that a person who is required to prepare a waste management plan is not taking any steps necessary in connection with the preparation of the plan, to prepare such a plan;
- 774 (D) require harbour authorities and persons operating terminals to implement waste management plans once approved, or to take such steps as the Secretary of State may in a particular case direct for the purpose of securing that approved plans are implemented;
- 775 (E) enable waste management plans, in such circumstances as may be prescribed, to be withdrawn, altered or replaced¹³.

1 The regulations under the Merchant Shipping Act 1995 s 130A: see PARA 421.

As to the regulations made see the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003, SI 2003/1809; and see in particular reg 6 (requirements regarding waste management plans), reg 7 (requirements regarding waste management plans: time for submission of first and subsequent plans), reg 8 (approval and implementation of waste management plans), reg 9 (power of the Secretary of State to prepare a waste management plan), reg 10 (direction to implement a waste management plan) and reg 11 (notification). As to fees in respect of plans see the Merchant Shipping (Fees) Regulations 2006, SI 2006/2055, Sch 1 Pt 14.

2 As to the meaning of 'harbour authority' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49.

3 As to the meaning of 'harbour' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49.

4 For these purposes, 'prescribe' means prescribe by regulations: Merchant Shipping Act 1995 s 130E (ss 130B, 130E added by the Merchant Shipping and Maritime Security Act 1997 s 5). See note 1.

5 As to the meaning of 'waste reception facilities' see PARA 421.

6 Merchant Shipping Act 1995 s 130B(1) (as added: see note 4). As to the meaning of 'United Kingdom' see PARA 1 note 2. As to the Secretary of State see PARA 58. See note 1.

7 For these purposes, 'terminal' means any terminal, jetty, pier, floating structure or other works within a harbour at which ships can obtain shelter or ship and unship goods or passengers: Merchant Shipping Act 1995 s 130B(3)(a) (as added: see note 4). As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

8 For these purposes, a person operates a terminal if activities at the terminal are under his control: Merchant Shipping Act 1995 s 130B(3)(b) (as added: see note 4).

9 Merchant Shipping Act 1995 s 130B(2) (as added: see note 4). See note 1.

10 For these purposes, 'waste management plan' means a plan of a description mentioned in the Merchant Shipping Act 1995 s 130B(1) or (2) (see the text and notes 1-9): s 130B(4) (as added: see note 4).

11 Merchant Shipping Act 1995 s 130B(5) (as added: see note 4). See note 1.

12 Merchant Shipping Act 1995 s 130B(6) (as added: see note 4). See note 1.

13 Merchant Shipping Act 1995 s 130B(7) (as added: see note 4). See note 1.

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423. Charges for and use of waste reception facilities.

The regulations¹ may make provision enabling a statutory harbour authority², on levying ship, passenger and goods dues³, to impose charges for the purpose of recovering the whole or a part of the costs of the provision by or on behalf of the authority of waste reception facilities⁴ at the harbour⁵.

The regulations may make provision requiring the master⁶ of a ship:

- 776 (1) if reasonably required to do so by a Departmental officer⁷; or
- 777 (2) in such other circumstances as may be prescribed⁸,

to deposit any waste carried by the ship, or any prescribed description of such waste, in waste reception facilities provided at a harbour in the United Kingdom⁹.

The regulations may make provision:

- 778 (a) for the reference to arbitration of questions as to whether requirements made under regulations made in pursuance of head (1) above were reasonable; and
- 779 (b) for compensation to be payable by the Secretary of State where a requirement is found to have been unreasonable¹⁰.

The regulations may make:

- 780 (i) provision prohibiting the imposition by persons providing waste reception facilities at harbours in the United Kingdom of charges for the depositing of waste, or any prescribed description of waste, in the facilities; or
- 781 (ii) provision authorising the imposition by such persons of such charges subject to such restrictions as may be prescribed¹¹.

If the regulations make provision enabling a statutory harbour authority to impose charges for the purpose of recovering the whole or a part of the costs of the provision by or on behalf of the authority of waste reception facilities at the harbour¹²:

- 782 (A) the regulations may require information about the charges to be published in a way that is designed to bring the charges to the notice of persons likely to be affected¹³;
- 783 (B) the regulations may provide for the charges to be reduced at the instance of the Secretary of State following the making of an objection by a person of a prescribed description¹⁴.

The regulations may make provision as to the recovery of any charges imposed by virtue of the above provisions¹⁵.

1 le regulations under the Merchant Shipping Act 1995 s 130A: see PARA 421.

As to the regulations made see the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003, SI 2003/1809; and see in particular reg 13 (charges for ship generated waste), reg 14 (charges for ship-generated waste: further provisions) and reg 16 (delivery of cargo residues). As to fees in respect of exemptions for port waste reception facilities see the Merchant Shipping (Fees) Regulations 2006, SI 2006/2055, Sch 1 Pt 14.

2 As to the meaning of 'statutory harbour authority' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 68.

3 For these purposes, 'ship, passenger and goods dues' has the same meaning as in the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 671): Merchant Shipping Act 1995 s 130E (ss 130C, 130E added by the Merchant Shipping and Maritime Security Act 1997 s 5). As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

4 As to the meaning of 'waste reception facilities' see PARA 421.

5 Merchant Shipping Act 1995 s 130C(1) (as added: see note 3). As to the meaning of 'harbour' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49. See note 1.

6 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.

7 As to the meaning of 'Departmental officer' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 47 note 11.

8 For these purposes, 'prescribe' means prescribe by regulations: Merchant Shipping Act 1995 s 130E (as added: see note 3).

9 Merchant Shipping Act 1995 s 130C(2) (as added: see note 3). As to the meaning of 'United Kingdom' see PARA 1 note 2. See note 1.

10 Merchant Shipping Act 1995 s 130C(3) (as added: see note 3). As to the Secretary of State see PARA 58. See note 1.

11 Merchant Shipping Act 1995 s 130C(4) (as added: see note 3). The regulations may provide for charges to be imposed by virtue of the Merchant Shipping Act 1995 s 130C(4)(b) (see head (ii) in the text): (1) even though the charges are for the depositing of waste in compliance with a requirement imposed by virtue of s 130C(2) (see the text and notes 6-9); and (2) even though charges are also imposed by virtue of s 130C(1) (see the text and notes 1-5): s 130C(5) (as added: see note 3). See note 1.

12 The charges of a description mentioned in the Merchant Shipping Act 1995 s 130C(1): see the text and notes 1-5.

13 Merchant Shipping Act 1995 s 130C(6), (7) (as added: see note 3).

14 Merchant Shipping Act 1995 s 130C(6), (8) (as added: see note 3). Regulations made by virtue of s 130C(8) may in particular make provision which corresponds to that made by the Harbours Act 1964 s 31(3)-(12) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 671): Merchant Shipping Act 1995 s 130C(9) (as so added). See note 1.

15 Merchant Shipping Act 1995 s 130C(10) (as added: see note 3). See note 1.

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424. Additional provisions.

The regulations¹ may provide that, where a person contravenes² a requirement under the regulations, he is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum³.

The regulations may:

- 784 (1) provide for exemptions from any provision of the regulations;
- 785 (2) provide for references in the regulations to any specified document to operate as references to that document as revised or reissued from time to time;
- 786 (3) make different provision for different cases;
- 787 (4) include such incidental, supplemental and transitional provision as appears to the Secretary of State to be expedient⁴.

Regulations made under the general provisions⁵ which contain any provision of a description mentioned in the provisions relating to charges for and the use of waste reception facilities⁶, whether or not they also contain other provision, must not be made unless a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of each House of Parliament⁷.

1 Ie regulations under the Merchant Shipping Act 1995 s 130A: see PARA 421.

As to the regulations made see the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003, SI 2003/1809; and see in particular reg 15 (exemptions), reg 18 (offences and penalties), reg 19 (offences by bodies corporate), reg 20 (inspection and detention of a United Kingdom ship), reg 21 (inspection and detention of ships other than United Kingdom ships), reg 22 (enforcement of detention) and reg 23 (arbitration and compensation).

2 As to the meaning of 'contravention' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 note 3.

3 Merchant Shipping Act 1995 s 130D(1) (s 130D added by the Merchant Shipping and Maritime Security Act 1997 s 5). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. See note 1.

4 Merchant Shipping Act 1995 s 130D(2) (as added: see note 3). As to the Secretary of State see PARA 58. See note 1.

5 Ie the Merchant Shipping Act 1995 s 130A: see PARA 421.

6 Ie the Merchant Shipping Act 1995 s 130C: see PARA 423.

7 Merchant Shipping Act 1995 s 130D(3) (as added: see note 3). A statutory instrument under s 130A (see PARA 421) to which s 130D(3) does not apply, including regulations which revoke provision of a description mentioned in s 130C (see PARA 423) but do not contain any other provision made by virtue of s 130C is subject to annulment in pursuance of a resolution of either House of Parliament: s 130D(4) (as so added). See note 1.

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(v) Oil Pollution

A. IN GENERAL

425. Discharge of oil from ships into certain United Kingdom waters.

If there is a relevant discharge¹, the following are² guilty of an offence, that is to say:

- 788 (1) if the discharge is from a ship, the owner or master³ of the ship, unless he proves that the discharge took place and was caused as mentioned in head (2) below;
- 789 (2) if the discharge is from the ship but takes place in the course of a transfer⁴ of oil to or from another ship or a place on land⁵ and is caused by the act or omission of any person in charge of any apparatus in that other ship or that place, the owner or master of that other ship or, as the case may be, the occupier⁶ of that place⁷.

The above provisions do not apply to any discharge from an offshore installation which:

- 790 (a) is made into the sea; and
- 791 (b) is of a kind or is made in circumstances for the time being prescribed by regulations made by the Secretary of State⁸.

A person guilty of an offence under the above provisions is liable on conviction to a fine⁹.

1 For these purposes, 'relevant discharge' means (1) a discharge of oil or a mixture containing oil which is made (a) from a ship which is an offshore installation; and (b) into United Kingdom national waters which are navigable by sea-going ships; or (2) a discharge of oil or a mixture containing oil which is made (a) from a ship which is not an offshore installation; and (b) into United Kingdom national waters which are navigable by sea-going ships but which do not form part of the sea: Merchant Shipping Act 1995 s 131(1A) (added by SI 2009/1210).

Any reference in the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A) (see PARA 426 et seq), other than in s 136 (see PARA 430), to the discharge of oil or a mixture containing oil, or to its being discharged, from a ship, place or thing, except where the reference is to its being discharged for a specific purpose, includes a reference to the escape of oil or mixture or, as the case may be, to its escaping, from that ship, place or thing (s 151(4)); and for the purposes of any provision of Pt VI Ch II relating to the discharge of oil or a mixture containing oil from a ship, any floating craft, other than a ship, which is attached to a ship is to be treated as part of the ship (s 151(5)). 'Oil' means oil of any description and includes spirit produced from oil of any description, and also includes coal tar: s 151(1). Any reference in any provision of Pt VI Ch II to a mixture containing oil is to be construed as a reference to any mixture of oil or, as the case may be, of oil of a description referred to in that provision, with water or with any other substance: s 151(3).

As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229. For the purposes of s 131, 'offshore installation' means any mobile or fixed drilling or production platform or any other platform used in connection with the exploration, exploitation or associated offshore processing of sea bed mineral resources: s 131(3A) (added by SI 2009/1210). Also for the purposes of the Merchant Shipping Act 1995 s 131, 'sea' includes any estuary or arm of the sea: s 131(4). As to the meaning of 'United Kingdom waters' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 48 note 10.

2 Ie subject to the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A): see PARA 426 et seq.

3 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.

4 For these purposes, 'transfer', in relation to oil, means transfer in bulk: Merchant Shipping Act 1995 s 151(1).

5 For these purposes, 'place on land' includes anything resting on the bed or shore of the sea, or of any other waters included in United Kingdom national waters, and also includes anything afloat, other than a ship, if it is anchored or attached to the bed or shore of the sea or any such waters: Merchant Shipping Act 1995 ss 131(5), 151(1).

6 For these purposes, 'occupier', in relation to any such thing as is mentioned in the Merchant Shipping Act 1995 s 131(5) (see note 5), if it has no occupier, means the owner thereof: s 131(6).

7 Merchant Shipping Act 1995 s 131(1) (amended by SI 2009/1210). As to the application of the Merchant Shipping Act 1995 s 131 to government ships see PARA 438; as to the Secretary of State's power to grant exemptions from the provisions of s 131 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 131 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 131 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 et seq.

The provisions of s 131(1) do not apply to any discharge which is made under an authorisation granted under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) (see PARA 159 et seq) or a permit granted under regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARAS 186, 187) or an authorisation or permit granted under any corresponding provisions of the law of Northern Ireland: Merchant Shipping Act 1995 s 136A (added by the Pollution Prevention and Control Act 1999 Sch 2 para 13; and amended by SI 2002/3153). As from a day to be appointed, the reference to an authorisation under the Environmental Protection Act 1990 Pt I is removed: Merchant Shipping Act 1995 s 136A (prospectively amended by the Pollution Prevention and Control Act 1999 Sch 3). At the date at which this volume states the law no such day had been appointed.

8 Merchant Shipping Act 1995 s 131(2) (amended by SI 2009/1210). As to the Secretary of State see PARA 58. At the date at which this volume states the law no such regulations had been made and none have effect as if so made. As to the making of regulations generally see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65. The Secretary of State's power under s 301 to appoint committees for the purpose of advising him when considering the making or alteration of any regulations does not apply to regulations under s 131: see s 301(1) and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41.

9 Merchant Shipping Act 1995 s 131(3) (amended by the Merchant Shipping and Maritime Security Act 1997 s 7(1)). Such a person is liable on summary conviction, to a fine not exceeding £250,000; or on conviction on indictment, to a fine: Merchant Shipping Act 1995 s 131(3) (as so amended). For defences see PARAS 426, 427. As to offences under s 131 see also s 143 (prosecutions and enforcement of fines) (see PARA 433), ss 144, 145 (power to detain ships) (see PARA 434) and s 146 (enforcement and application of fines) (see PARA 435).

See further, in relation to the application of s 131(3), with modifications, in respect of such contravention of regulations made under the Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006, SI 2006/2950, as maybe specified in those regulations in respect of an offence under the Merchant Shipping Act 1995 s 131, the Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006, SI 2006/2950, art 6.

As to the time limit for summary offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1100; as to offences by officers of bodies corporate see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1102; as to jurisdiction in relation to offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1103; as to jurisdiction over ships lying off the coast see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1104; as to jurisdiction in the case of offences on board ship see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1105; as to offences committed by British seamen see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1106; and as to proof etc of exemption see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1112.

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426. Defences of owner or master charged with offence.

Where a person is charged with an offence of discharging oil from a ship into certain United Kingdom waters¹ as the owner or master² of a ship³, it is a defence to prove that the oil⁴ or mixture⁵ was discharged⁶ for the purpose of:

- 792 (1) securing the safety of any ship;
- 793 (2) preventing damage to any ship or cargo; or
- 794 (3) saving life,

unless the court is satisfied that the discharge of the oil or mixture was not necessary for that purpose or was not a reasonable step to take in the circumstances⁷.

Where a person is charged with such an offence as the owner or master of a ship, it is also a defence to prove:

- 795 (a) that the oil or mixture escaped in consequence of damage to the ship, and that, as soon as practicable after the damage occurred, all reasonable steps were taken for preventing, or, if it could not be prevented, for stopping or reducing, the escape of the oil or mixture; or
- 796 (b) that the oil or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that, as soon as practicable after the escape was discovered, all reasonable steps were taken for stopping or reducing it⁸.

1 le an offence under the Merchant Shipping Act 1995 s 131: see PARA 425.

2 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.

3 As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

4 As to the meaning of 'oil' see PARA 425 note 1.

5 As to the meaning of 'mixture containing oil' see PARA 425 note 1.

6 As to the meaning of 'discharge' see PARA 425 note 1.

7 Merchant Shipping Act 1995 s 132(1). As to the application of s 132 to government ships see PARA 438; as to the Secretary of State's power to grant exemptions from the provisions of s 132 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 132 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 132 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 et seq.

8 Merchant Shipping Act 1995 s 132(2).

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427. Defences of occupier charged with offence.

Where a person is charged, in respect of the escape of any oil¹ or mixture containing oil², with an offence of discharging oil from a ship into certain United Kingdom waters³ as the occupier⁴ of a place on land⁵, it is a defence to prove that neither the escape nor any delay in discovering it was due to any want of reasonable care and that, as soon as practicable after it was discovered, all reasonable steps were taken for stopping or reducing it⁶.

1 As to the meaning of 'oil' see PARA 425 note 1.

2 As to the meaning of 'mixture containing oil' see PARA 425 note 1.

3 Is an offence under the Merchant Shipping Act 1995 s 131: see PARA 425.

4 As to the meaning of 'occupier' see PARA 425 note 6.

5 As to the meaning of 'place on land' see PARA 425 note 5.

6 Merchant Shipping Act 1995 s 133. As to the application of s 133 to government ships see PARA 438; as to the Secretary of State's power to grant exemptions from the provisions of s 133 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 133 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 133 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 et seq.

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428. Protection for acts done in exercise of certain powers of harbour authorities etc.

Where any oil¹, or mixture containing oil², is discharged³ in consequence of:

- 797 (1) the exercise of any power conferred by the statutory provisions relating to the removal of wrecks⁴; or
- 798 (2) the exercise for the purpose of preventing obstruction or danger to navigation, of any power to dispose of sunk, stranded or abandoned ships⁵ which is exercisable by a harbour authority⁶ under any local enactment⁷,

and the authority exercising the power, or a person employed by or acting on behalf of the authority, would otherwise⁸ be guilty of an offence⁹ in respect of that discharge, the authority or person must not be convicted unless it is shown that it or he failed to take such steps, if any, as were reasonable in the circumstances for preventing, stopping or reducing the discharge¹⁰.

1 As to the meaning of 'oil' see PARA 425 note 1.

2 As to the meaning of 'mixture containing oil' see PARA 425 note 1.

3 As to the meaning of 'discharge' see PARA 425 note 1.

4 Ie the Merchant Shipping Act 1995 s 252 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1008) or s 253 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1009).

5 As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

6 For these purposes, 'harbour authority' means a person or body of persons empowered by an enactment to make charges in respect of ships entering a harbour in the United Kingdom or using facilities therein: Merchant Shipping Act 1995 s 151(1). 'Harbour in the United Kingdom' means a port, estuary, haven, dock or other place the waters of which are within United Kingdom national waters and in respect of entry into or the use of which by ships a person or body of persons is empowered by an enactment (including a local enactment) to make any charges other than charges in respect of navigational aids or pilotage: s 151(1). 'Charges in respect of navigational aids' means general light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons: s 151(2). As to the meaning of 'harbour' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49; as to the meaning of 'port' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49; and as to the meaning of 'United Kingdom waters' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 48 note 10.

7 For these purposes, 'local enactment' means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special Parliamentary procedure: Merchant Shipping Act 1995 s 151(1).

8 Ie apart from the Merchant Shipping Act 1995 s 134(1).

9 Ie an offence under the Merchant Shipping Act 1995 s 131: see PARA 425.

10 Merchant Shipping Act 1995 s 134(1). Section 134(1) applies to the exercise of any power conferred by the Dockyard Ports Regulation Act 1865 s 13 (removal of obstructions to dockyard ports) (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 693) as it applies to the exercise of the powers under the Merchant Shipping Act 1995 ss 252, 253 (see note 4), and has effect, as so applying, as if references to the authority exercising the power were references to the Queen's harbour master for the port in question: s 134(2). As to

Queen's harbour masters see the Dockyard Ports Regulation Act 1865 s 4; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 693.

As to the application of the Merchant Shipping Act 1995 s 134 to government ships see PARA 438; as to the Secretary of State's power to grant exemptions from the provisions of s 134 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 134 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 134 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 et seq.

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429. Restrictions on transfer of oil at night.

No oil¹ must be transferred between sunset and sunrise to or from a ship² in any harbour in the United Kingdom³ unless the requisite notice has been given in accordance with the following provisions or the transfer is for the purposes of a fire and rescue authority or other employer of fire-fighters⁴.

A general notice may be given to the harbour master⁵ of a harbour that transfers⁶ of oil between sunset and sunrise will be frequently carried out at a place in the harbour within such period, not ending later than 12 months after the date on which the notice is given as is specified in the notice; and, if such a notice is given, it is the requisite notice for these purposes as regards transfers of oil at that place within the period specified in the notice⁷.

The requisite notice for these purposes is⁸ a notice given to the harbour master not less than three hours nor more than 96 hours before the transfer of oil begins⁹.

If any oil is transferred to or from a ship in contravention¹⁰ of the above provisions, the master¹¹ of the ship, and, if the oil is transferred from or to a place on land¹², the occupier of that place, is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹³.

1 As to the meaning of 'oil' see PARA 425 note 1.

2 As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

3 As to the meaning of 'harbour in the United Kingdom' see PARA 428 note 6.

4 Merchant Shipping Act 1995 s 135(1) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 87). As to the application of the Merchant Shipping Act 1995 s 135 to government ships see PARA 438; as to the Secretary of State's power to grant exemptions from the provisions of s 135 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 135 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 135 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 et seq.

5 For these purposes, 'harbour master' includes a dock master or pier master, and any person specially appointed by a harbour authority for the purpose of enforcing the provisions of the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A) (see PARA 425 et seq and PARA 430 et seq) in relation to the harbour: s 151(1). In case of a harbour which has no harbour master, references in s 135 to the harbour master are to be construed as references to the harbour authority: s 135(4). As to the meaning of 'harbour authority' see PARA 428 note 6.

6 As to the meaning of 'transfer' see PARA 425 note 4.

7 Merchant Shipping Act 1995 s 135(2).

8 Ie subject to the Merchant Shipping Act 1995 s 135(2): see the text and notes 5-7.

9 Merchant Shipping Act 1995 s 135(3).

10 As to the meaning of 'contravention' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50.

11 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.

12 As to the meaning of 'place on land' see PARA 425 note 5.

13 Merchant Shipping Act 1995 s 135(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to offences under s 135 see also s 143 (prosecutions and enforcement of fines) (see PARA 433) and s 146 (enforcement and application of fines) (see PARA 435).

As to the time limit for summary offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1100; as to offences by officers of bodies corporate see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1102; as to jurisdiction in relation to offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1103; as to jurisdiction over ships lying off the coast see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1104; as to jurisdiction in the case of offences on board ship see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1105; as to offences committed by British seamen see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1106; and as to proof etc of exemption see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1112.

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430. Duty to report discharge of oil into waters of harbours.

If any oil¹ or mixture containing oil²:

799 (1) is discharged³ from a ship⁴ into the waters of a harbour in the United Kingdom⁵; or

800 (2) is found to be escaping or to have escaped from a ship into any such waters,

the owner or master⁶ of the ship must forthwith report the occurrence to the harbour master⁷, or, if the harbour has no harbour master, to the harbour authority⁸.

A report so made must state whether the occurrence falls within head (1) or (2) above⁹.

If a person fails to make a report as so required, he is liable to a fine¹⁰.

1 As to the meaning of 'oil' see PARA 425 note 1.

2 As to the meaning of 'mixture containing oil' see PARA 425 note 1.

3 For these purposes, the meaning of 'discharge' does not apply: see PARA 425 note 1.

4 As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

5 As to the meaning of 'harbour in the United Kingdom' see PARA 428 note 6.

6 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.

7 As to the meaning of 'harbour master' see PARA 429 note 5.

8 Merchant Shipping Act 1995 s 136(1). As to the meaning of 'harbour authority' see PARA 428 note 6. As to the application of s 136 to government ships see PARA 438; as to the Secretary of State's power to grant exemptions from the provisions of s 136 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 136 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 136 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50.

The provisions of s 136(1) do not apply to any discharge which is made under, or to any escape which is authorised by, an authorisation granted under the Environmental Protection Act 1990 Pt I (ss 1-28) (prospectively repealed) (see PARA 159 et seq) or a permit granted under regulations under the Pollution Prevention and Control Act 1999 s 2 (see PARAS 186, 187) or an authorisation or permit granted under any corresponding provisions of the law of Northern Ireland: Merchant Shipping Act 1995 s 136A (added by the Pollution Prevention and Control Act 1999 Sch 2 para 13; and amended by SI 2002/3153). As from a day to be appointed, the reference to an authorisation under the Environmental Protection Act 1990 Pt I is removed: Merchant Shipping Act 1995 s 136A (prospectively amended by the Pollution Prevention and Control Act 1999 Sch 3). At the date at which this volume states the law no such day had been appointed.

9 Merchant Shipping Act 1995 s 136(2).

10 Merchant Shipping Act 1995 s 136(3). Such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 136(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to offences under s 136 see also s 143 (prosecutions and enforcement of fines) (see PARA 433) and s 146 (enforcement and application of fines) (see PARA 435).

As to the time limit for summary offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1100; as to offences by officers of bodies corporate see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1102; as to jurisdiction in relation to offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1103; as to jurisdiction over ships lying off the coast see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1104; as to jurisdiction in the case of offences on board ship see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1105; as to offences committed by British seamen see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1106; and as to proof etc of exemption see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1112.

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431. Safety directions.

The Merchant Shipping Act 1995 contains general provisions as to safety directions which may be given in respect of accidents involving ships, including directions in regard to an accident creating a risk of pollution by a hazardous substance¹. This is dealt with elsewhere in this work².

1 See the Merchant Shipping Act 1995 s 108A, Sch 3A (added by the Marine Safety Act 2003 Sch 1). It should be noted that the previous provisions of the Merchant Shipping Act 1995 relating to shipping casualties (ie ss 137-141) were repealed by the Marine Safety Act 2003 s 3, Sch 2 para 2, Sch 3.

2 See **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 686 et seq.

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B. ENFORCEMENT

432. Oil records.

The Secretary of State may make regulations requiring oil record books to be carried in United Kingdom ships¹ and requiring the master² of any such ship to record in the oil record book carried by it:

- 801 (1) the carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed relating to:
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 35. (a) the loading of oil cargo;
 36. (b) the transfer³ of oil cargo during a voyage;
 37. (c) the discharge⁴ of oil cargo,
 38. (d) the ballasting of oil tanks, whether cargo or bunker fuel tanks, and the discharge of ballast from, and cleaning of, such tanks;
 39. (e) the separation of oil⁵ from water, or from other substances, in any mixture containing oil⁶;
 40. (f) the disposal of any oil or water, or any other substance, arising from operations relating to any of the matters specified in heads (a) to (e) above; or
 41. (g) the disposal of any other oil residues⁷;
- 108 802 (2) any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing the safety of any ship, or of preventing damage to any ship or cargo, or of saving life;
- 803 (3) any occasion on which oil or a mixture containing oil is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of leakage⁸.

The Secretary of State may make regulations requiring the keeping of records relating to the transfer of oil to and from ships while they are within United Kingdom waters⁹; and the requirements of any regulations so made are in addition to the requirements of any regulations made¹⁰ under the above provisions¹¹.

Any records required to be kept by regulations so made¹² must, unless the ship is a barge¹³, be kept by the master of the ship, and must, if the ship is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered¹⁴.

Regulations under the above provisions requiring the carrying of oil record books or the keeping of records may:

- 804 (i) prescribe the form of the oil record books or records and the nature of the entries to be made in them;
- 805 (ii) require the person providing or keeping the books or records to retain them for a prescribed period;

- 806 (iii) require that person, at the end of the prescribed period, to transmit the books or records to a place or person determined by or under the regulations;
- 807 (iv) provide for the custody or disposal of the books or records after their transmission to such a place or person¹⁵.

Regulations under the above provisions may be made with respect to all or with respect to any one or more of the classes of ship or other matters to which the provisions relate, and may make different provision for different classes of ship or otherwise for different classes of case or different circumstances¹⁶.

If any ship fails to carry such an oil record book as it is required to carry under these provisions, the owner or master is liable to a fine¹⁷.

If any person fails to comply with any requirements imposed on him by or under these provisions, he is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁸.

If any person makes an entry in any oil record book carried or record kept under these provisions which is to his knowledge false or misleading in any material particular, he is liable on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or to both, or on summary conviction to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding six months, or to both¹⁹.

In any proceedings²⁰:

- 808 (A) any oil record book carried or record kept in pursuance of regulations made under the above provisions is admissible as evidence of the facts stated in it;
- 809 (B) any copy of an entry in such an oil record book or record which is certified by the master of the ship in which the book is carried or by the person by whom the record is required to be kept to be a true copy of the entry is admissible as evidence of the facts stated in the entry;
- 810 (C) any document purporting to be an oil record book carried or record kept in pursuance of regulations made under the above provisions, or purporting to be such a certified copy as is mentioned in head (B) above, is to be presumed, unless the contrary is proved, to be such a book, record or copy, as the case may be²¹.

1 As to the meaning of 'United Kingdom ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 230. As to the Secretary of State see PARA 58.

2 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.

3 As to the meaning of 'transfer' see PARA 425 note 4.

4 As to the meaning of 'discharge' see PARA 425 note 1.

5 As to the meaning of 'oil' see PARA 425 note 1.

6 As to the meaning of 'mixture containing oil' see PARA 425 note 1.

7 For these purposes, 'oil residues' means any waste consisting of, or arising from, oil or a mixture containing oil: Merchant Shipping Act 1995 s 151(1).

8 Merchant Shipping Act 1995 s 142(1). At the date at which this volume states the law no such regulations had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Oil in Navigable Waters (Transfer Records) Regulations 1957, SI 1957/358, and the Oil in Navigable Waters (Records) Regulations 1972, SI 1972/1929 (amended by SI 1983/1106) have effect as if so made. As to the making of regulations generally see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65. The Secretary of State's power under the Merchant Shipping Act 1995 s 301 to appoint committees for the purpose of advising him when considering the making or alteration of any regulations does not apply to regulations under s 142: see s 301(1) and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41.

As to the application of s 142 to government ships see **PARA 438**; as to the Secretary of State's power to grant exemptions from the provisions of s 142 see **PARA 437**; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) **PARA 46**) to serve improvement notices or prohibition notices where s 142 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 142 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) **PARA 50** et seq.

9 As to the meaning of 'United Kingdom waters' see **SHIPPING AND MARITIME LAW** vol 93 (2008) **PARA 48** note 10.

10 Ie under the Merchant Shipping Act 1995 s 142(1).

11 Merchant Shipping Act 1995 s 142(2).

12 Ie under the Merchant Shipping Act 1995 s 142(2).

13 For these purposes, 'barge' includes a lighter and any similar vessel: Merchant Shipping Act 1995 s 142(10).

14 Merchant Shipping Act 1995 s 142(3).

15 Merchant Shipping Act 1995 s 142(4).

16 Merchant Shipping Act 1995 s 142(5).

17 Merchant Shipping Act 1995 s 142(6). Each is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 142(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) **PARA 142**. As to the time limit for summary offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) **PARA 1100**; as to offences by officers of bodies corporate see **SHIPPING AND MARITIME LAW** vol 94 (2008) **PARA 1102**; as to jurisdiction in relation to offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) **PARA 1103**; as to jurisdiction over ships lying off the coast see **SHIPPING AND MARITIME LAW** vol 94 (2008) **PARA 1104**; as to jurisdiction in the case of offences on board ship see **SHIPPING AND MARITIME LAW** vol 94 (2008) **PARA 1105**; as to offences committed by British seamen see **SHIPPING AND MARITIME LAW** vol 94 (2008) **PARA 1106**; and as to proof etc of exemption see **SHIPPING AND MARITIME LAW** vol 94 (2008) **PARA 1112**.

18 Merchant Shipping Act 1995 s 142(7).

19 Merchant Shipping Act 1995 s 142(8).

20 Ie under the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A): see **PARA 425** et seq and **PARA 433** et seq.

21 Merchant Shipping Act 1995 s 142(9).

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433. Prosecutions and enforcement of fines.

Proceedings for an offence under the provisions relating to oil pollution¹ may, in England and Wales, be brought only:

811 (1) by or with the consent of the Attorney General; or

812 (2) if the offence is:

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42. (a) any offence² which is alleged to have been committed by the discharge³ of oil⁴, or a mixture containing oil⁵, into the waters of a harbour in the United Kingdom⁶;

43. (b) any offence in relation to a harbour in the United Kingdom⁷; and

44. (c) any offence⁸ relating to the keeping of records of the transfer⁹ of oil within such a harbour,

45. by the harbour authority¹⁰; or

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813 (3) unless the offence is one mentioned in head (2)(b) or (2)(c) above, by the Secretary of State or a person authorised by any general or special direction of the Secretary of State¹¹.

The above provisions apply in relation to any part of a dockyard port¹² as follows:

814 (i) if that part is comprised in a harbour in the United Kingdom, the reference to the harbour authority is to be construed as including a reference to the Queen's harbour master¹³ for the port;

815 (ii) if that part is not comprised in a harbour in the United Kingdom, the references to such a harbour are to be construed as references to such a dockyard port and the reference to the harbour authority as a reference to the Queen's harbour master for the port¹⁴.

Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company¹⁵ for the purposes of the institution of, or otherwise in connection with, proceedings for an offence of discharging oil from a ship into certain United Kingdom waters¹⁶ alleged to have been committed by the company as the owner of the ship is to be treated as duly served on that company if the document is served on the master¹⁷ of the ship¹⁸.

Any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for any offence¹⁹ has the right, for that purpose, to go on board the ship in question²⁰.

1 Ie an offence under the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A): see PARA 425 et seq and PARA 434 et seq.

2 Ie any offence under the Merchant Shipping Act 1995 s 131: see PARA 425.

3 As to the meaning of 'discharge' see PARA 425 note 1.

- 4 As to the meaning of 'oil' see PARA 425 note 1.
- 5 As to the meaning of 'mixture containing oil' see PARA 425 note 1.
- 6 As to the meaning of 'harbour in the United Kingdom' see PARA 428 note 6. As to the meaning of 'United Kingdom' see PARA 1 note 2.
- 7 le under the Merchant Shipping Act 1995 s 135 (see PARA 429) or s 136 (see PARA 430).
- 8 le under the Merchant Shipping Act 1995 s 142: see PARA 432.
- 9 As to the meaning of 'transfer' see PARA 425 note 4.
- 10 As to the meaning of 'harbour authority' see PARA 428 note 6.
- 11 Merchant Shipping Act 1995 s 143(1), (4). As to the Secretary of State see PARA 58. As to proceedings for offences in Northern Ireland see s 143(2), (3). As to the application of s 143 to government ships see PARA 438; as to the Secretary of State's power to grant exemptions from the provisions of s 143 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 143 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 143 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50.
- 12 le within the meaning of the Dockyard Ports Regulation Act 1865: see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 613.
- 13 As to Queen's harbour masters see the Dockyard Ports Regulation Act 1865 s 4; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 693.
- 14 Merchant Shipping Act 1995 s 143(5).
- 15 For these purposes, 'foreign company' means a company or body which is not one to which of the Companies Act 2006 s 1139 (see **COMPANIES** vol 15 (2009) PARA 1836) applies so as to authorise the service of the document in question: Merchant Shipping Act 1995 s 143(6) (amended by SI 2009/1941).
- 16 le under the Merchant Shipping Act 1995 s 131: see PARA 425. As to the meaning of 'United Kingdom waters' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 48 note 10.
- 17 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.
- 18 Merchant Shipping Act 1995 s 143(6).
- 19 See note 1.
- 20 Merchant Shipping Act 1995 s 143(7).

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434. Power to detain ships.

Where a harbour master¹ has reason to believe that the master² or owner of a ship³ has committed an offence⁴ by the discharge⁵ from the ship of oil⁶, or a mixture containing oil⁷, into the waters of the harbour, the harbour master may detain the ship⁸.

Where a harbour master so detains a ship other than a United Kingdom ship⁹, he must immediately notify the Secretary of State, who must then inform the consul or diplomatic representative of the state whose flag the ship is entitled to fly or the appropriate maritime authorities of that state¹⁰.

A harbour master who so detains a ship must immediately release the ship:

- 816 (1) if no proceedings for the offence are instituted¹¹ within the period of seven days beginning with the day on which the ship is detained;
- 817 (2) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted¹²;
- 818 (3) if either the sum of £255,000 is paid to the harbour authority by way of security, or security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than £255,000 is given to the harbour authority, by or on behalf of the master or owner; or
- 819 (4) where the master or owner is convicted of the offence, if any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid¹³.

The harbour authority must repay any sum paid in pursuance of head (3) above or release any security so given:

- 820 (a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the sum is paid; or
- 821 (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted¹⁴.

Where a sum has been paid, or security has been given, by any person in pursuance of head (3) above and the master or owner is convicted of the offence, the sum so paid or the amount made available under the security must be applied as follows:

- 822 (i) first in payment of any costs or expenses ordered by the court to be paid by the master or owner; and
- 823 (ii) next in payment of any fine imposed by the court;

and any balance must be repaid to the first-mentioned person¹⁵.

The above provisions do not apply in relation to a ship of Her Majesty's navy or any government ship¹⁶.

1 For these purposes, any reference to a harbour master or a harbour authority is to be construed, where the harbour in question consists of or includes the whole or any part of a dockyard port within the meaning of the Dockyard Ports Regulation Act 1865 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 613), as including a reference to the Queen's harbour master for the port: Merchant Shipping Act 1995 s 144(7). As to Queen's harbour masters see the Dockyard Ports Regulation Act 1865 s 4; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 693.

2 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.

3 As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

4 le under the Merchant Shipping Act 1995 s 131: see PARA 425.

5 As to the meaning of 'discharge' see PARA 425 note 1.

6 As to the meaning of 'oil' see PARA 425 note 1.

7 As to the meaning of 'mixture containing oil' see PARA 425 note 1.

8 Merchant Shipping Act 1995 s 144(1). Section 284 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1253), in its application to the detention of a ship under s 144, has effect with the omission of s 284(1), (6), (7) and as if: (1) in s 284(2) the reference to competent authority were a reference to the harbour authority; and (2) in s 284(4) the persons in relation to whom s 284(4) applies were the harbour master or any person acting on his behalf: s 144(2).

As to the application of ss 144, 145 to government ships see PARA 438; as to the Secretary of State's power to grant exemptions from the provisions of ss 144, 145 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 144 or, as the case may be, s 145 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 144 or, as the case may be, s 145 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50.

9 For these purposes, 'United Kingdom ship' has the same meaning as in the Merchant Shipping Act 1995 s 85 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 230): s 144(3).

10 Merchant Shipping Act 1995 s 144(3). As to the Secretary of State see PARA 58.

11 For these purposes, proceedings for an offence under the Merchant Shipping Act 1995 s 131 are instituted: (1) when a justice of the peace issues a summons or warrant under the Magistrates' Courts Act 1980 s 1 (see **MAGISTRATES**) in respect of the offence; (2) when a person is charged with the offence after being taken into custody without a warrant; (3) when a bill of indictment is preferred under the Administration of Justice (Miscellaneous Provisions) Act 1933 s 2(2)(b): Merchant Shipping Act 1995 s 145(1), (2)(a). As from a day to be appointed, another head is added to the above as follows 'when a public prosecutor issues a written charge and requisition in respect of that offence' and a new provision is added providing that in s 145(2) 'public prosecutor', 'requisition' and 'written charge' have the same meaning as in the Criminal Justice Act 2003 s 29: Merchant Shipping Act 1995 s 145(2), (2A) (s 145(2) prospectively amended and s 145(2A) prospectively added by the Criminal Justice Act 2003 Sch 36 Pt 2 para 13). At the date at which this volume states the law no such day had been appointed. Where the application of the Merchant Shipping Act 1995 s 145(2)(a) would result in there being more than one time for the institution of proceedings, they are to be taken to have been instituted at the earliest of those times: s 145(4). As to when proceedings are instituted in Northern Ireland see s 145(3)(a).

12 For these purposes, proceedings for the offence are concluded without the master or owner being convicted on the occurrence of one of the following events: (1) the discontinuance of the proceedings; (2) the acquittal of the master or owner; (3) the quashing of the master's or owner's conviction of the offence; (4) the grant of Her Majesty's pardon in respect of the master's or owner's conviction of the offence: Merchant Shipping Act 1995 s 145(1), (2)(b). As to when proceedings are concluded in Northern Ireland see s 145(3)(b).

13 Merchant Shipping Act 1995 s 144(4) (amended by the Merchant Shipping and Maritime Security Act 1997 s 7(3)). As to the application of the Merchant Shipping Act 1995 s 144(4)-(6) in the context of detention under the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996, SI 1996/3010, reg 15(3)(a) see reg 15(5); and PARA 419 note 8.

14 Merchant Shipping Act 1995 s 144(5). See note 13.

15 Merchant Shipping Act 1995 s 144(6). See note 13.

16 Merchant Shipping Act 1995 s 144(8). As to the meaning of 'government ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 20 note 3.

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435. Enforcement and application of fines.

Where a fine imposed by a court in proceedings against the owner or master¹ of a ship² for an offence under the provisions relating to pollution³ is not paid, or any costs or expenses ordered to be paid by him are not paid, at the time ordered by the court, the court has power, in addition to any other powers of enforcing payment, to direct the amount remaining unpaid to be levied by distress of the ship and its equipment⁴.

Where a person is convicted of an offence of discharging oil from a ship into certain United Kingdom waters⁵, and the court imposes a fine in respect of the offence, then, if it appears to the court that any person has incurred, or will incur, expenses in removing any pollution, or making good any damage, which is attributable to the offence, the court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses⁶.

1 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.

2 As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

3 Ie an offence under the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A): see PARA 425 et seq and PARA 436 et seq.

4 Merchant Shipping Act 1995 s 146(1). As to the application of s 146 to government ships see PARA 438; as to the Secretary of State's power to grant exemptions from the provisions of s 146 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 146 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 146 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50.

See further, in relation to the application of s 146(1), with modifications, to any fine imposed for a particular offence, as if the reference to proceedings against the owner or master of a ship for an offence were a reference to proceedings against any person for an offence under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 17(1)-(3), the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007, SI 2007/3100, reg 17(5).

5 Ie an offence under the Merchant Shipping Act 1995 s 131: see PARA 425.

6 Merchant Shipping Act 1995 s 146(2).

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436. Enforcement of Conventions relating to oil pollution.

Her Majesty may by Order in Council empower such persons as may be designated by or under the Order to go on board any Convention ship¹ while the ship is within a harbour in the United Kingdom², and to require production of any oil record book required to be carried in accordance with the Convention³.

Such an Order in Council may, for the purposes of the Order, and with any necessary modifications, apply any of the provisions⁴ relating to the production and inspection of oil record books and the taking of copies of entries therein, and to the admissibility in evidence of such oil record books and copies, including any penal provisions⁵ in so far as they relate to those matters, and may also apply the provisions⁶ giving inspectors powers in relation to premises and ships⁷.

If satisfied that the government of any country has accepted, or denounced, the Convention, or that the Convention extends, or has ceased to extend, to any territory, Her Majesty may by Order in Council make a declaration to that effect⁸.

1 For these purposes, 'Convention ship' means a ship registered in: (1) a country the government of which has been declared by an Order in Council under the Merchant Shipping Act 1995 s 147(3) (see the text and note 8) to have accepted the Convention, and has not been so declared to have denounced it; or (2) a territory to which it has been so declared that the Convention extends, not being a territory to which it has been so declared that the Convention has ceased to extend: Merchant Shipping Act 1995 s 147(4). 'Convention' means any Convention accepted by Her Majesty's government in the United Kingdom in so far as it relates to the prevention of pollution of the sea by oil: Merchant Shipping Act 1995 s 147(4).

2 As to the meaning of 'harbour in the United Kingdom' see PARA 428 note 6.

3 Merchant Shipping Act 1995 s 147(1). At the date at which this volume states the law no such Order in Council had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Prevention of Oil Pollution (Convention Countries) Order 1981, SI 1981/612, has effect as if so made.

As to the application of the Merchant Shipping Act 1985 s 147 to government ships see PARA 438; as to the Secretary of State's power to grant exemptions from the provisions of s 147 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 147 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 147 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50.

4 Ie the provisions of the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A): see PARA 425 et seq and PARAS 437-439.

5 Ie any penal provisions of the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A).

6 Ie the Merchant Shipping Act 1995 s 259: see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49. Any power conferred by s 259 in its application to Pt VI Ch II (ss 131-136A) to test any equipment on board a ship is to be construed as including a power to require persons on board the ship to carry out such work as may be requisite for the purpose of testing the equipment; and any provision of s 259 as to submitting equipment for testing is to be construed accordingly: s 151(6).

7 Merchant Shipping Act 1995 s 147(2).

8 Merchant Shipping Act 1995 s 147(3).

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C. MISCELLANEOUS PROVISIONS

437. Secretary of State's power to grant exemptions.

The Secretary of State may exempt from any of the provisions relating to oil pollution¹ or of any regulations made thereunder, either absolutely or subject to such conditions as he thinks fit:

- 824 (1) any ship² or classes of ships;
- 825 (2) any discharge³ of, or of a mixture containing⁴, oil⁵.

1 le the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A): see PARA 425 et seq and PARAS 438, 439.

2 As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

3 As to the meaning of 'discharge' see PARA 425 note 1.

4 As to the meaning of 'mixture containing oil' see PARA 425 note 1; and as to the meaning of 'oil' see PARA 425 note 1.

5 Merchant Shipping Act 1995 s 148. As to the Secretary of State see PARA 58. As to the application of s 148 to government ships see PARA 438; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 148 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 148 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50.

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438. Application to government ships.

The provisions relating to oil pollution¹ do not apply to ships of Her Majesty's navy nor to government ships² in the service of the Secretary of State while employed for the purposes of Her Majesty's navy³.

Subject to this⁴, provisions relating to oil pollution⁵:

826 (1) which are expressed to apply only to United Kingdom ships⁶ apply to government ships registered⁷ in the United Kingdom and also to government ships not so registered but held for the purposes of Her Majesty's government in the United Kingdom⁸;

827 (2) which are expressed to apply to ships generally apply to government ships⁹.

1 Ie the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A): see PARA 425 et seq and PARA 439.

2 As to the meaning of 'government ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 20 note 3.

3 Merchant Shipping Act 1995 s 149(1). As to the Secretary of State see PARA 58. As to the Secretary of State's power to grant exemptions from the provisions of s 149 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 149 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 149 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50.

4 Ie the Merchant Shipping Act 1995 s 149(2) is subject to s 149(1) (see the text and notes 1-3) and s 144(8) (see PARA 434): see s 149(2).

5 Ie provisions of the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A).

6 As to the meaning of 'United Kingdom ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 230.

7 As to the meaning of 'registered' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 254.

8 Merchant Shipping Act 1995 s 149(2)(a).

9 Merchant Shipping Act 1995 s 149(2)(b). See also note 7.

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439. Annual report.

As soon as possible after the end of each calendar year, the Secretary of State must make a report on the exercise and performance of his functions under the provisions relating to oil pollution¹ during that year².

Every such report must include such observations as he may think fit to make on the operation during that year of those provisions and of any Convention accepted by Her Majesty's government in the United Kingdom in so far as it relates to the prevention of pollution of the sea by oil³.

The Secretary of State must lay a copy of every such report before each House of Parliament⁴.

1 In the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A): see PARA 425 et seq.

2 Merchant Shipping Act 1995 s 150(1). As to the Secretary of State see PARA 58. As to the Secretary of State's power to grant exemptions from the provisions of s 150 see PARA 437; and as to the powers of inspectors appointed under s 256(6) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 46) to serve improvement notices or prohibition notices where s 150 and the provisions of any instrument of a legislative character having effect thereunder are being contravened, or where activities to which s 150 applies are carried on so as to involve serious personal injury or serious pollution, see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 et seq.

3 Merchant Shipping Act 1995 s 150(2). As to the meaning of 'oil' see PARA 425 note 1.

4 Merchant Shipping Act 1995 s 150(3).

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440. Remedies under other provisions.

Nothing in the provisions relating to oil pollution¹:

828 (1) affects any restriction imposed by or under any other enactment, whether contained in a public general Act or a local or private Act; or

829 (2) derogates from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under those provisions².

1 ie the Merchant Shipping Act 1995 Pt VI Ch II (ss 131-136A): see PARA 425 et seq.

2 Merchant Shipping Act 1995 s 151(7). Section 151(7) is subject to the Interpretation Act 1978 s 18 (offence under two or more laws): Merchant Shipping Act 1995 s 151(7).

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(vi) Liability for Oil Pollution

A. IN GENERAL

441. Parties to the Liability Convention.

If Her Majesty by Order in Council declares that any state specified in the Order is a party to the International Convention on Civil Liability for Oil Pollution Damage 1992 (the 'Liability Convention'), in respect of any country so specified, the Order is conclusive evidence, while in force, that that state is a party to that Convention in respect of that country¹.

¹ Merchant Shipping Act 1995 s 152(1), (2). As from a day to be appointed a reference is added to the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the 'Bunkers Convention'): Merchant Shipping Act 1995 s 152(1), (2) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such day had been appointed. At the date at which this volume states the law no such Order in Council had been made. The Merchant Shipping Act 1995 s 306(3) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65) does not apply to a statutory instrument containing an Order in Council under the Merchant Shipping Act 1995 s 152(2): s 306(3).

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442. Power to make transitional provisions.

Until 30 May 1996 alternative provisions¹ relating to liability for oil pollution had effect².

Her Majesty may³ by Order in Council make such provision as appears to Her Majesty to be appropriate in connection with the implementation of any transitional provisions contained in the 1992 Protocol⁴ or the Conventions which they amend⁵.

1 Ie the provisions set out in the Merchant Shipping Act 1995 s 171(1), Sch 4 as Pt VI Ch III (ss 152-171).

2 Merchant Shipping Act 1995 s 171(1); Merchant Shipping Act 1995 (Appointed Day No 1) Order 1996, SI 1996/1210, art 2.

3 Ie notwithstanding the Merchant Shipping Act 1995 s 171(1): see the text and notes 1, 2.

4 For these purposes, '1992 Protocol' means the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969 to 31 December 1970; TS 106 (1975); Cmnd 6183) signed in London on 27 November 1992: Merchant Shipping Act 1995 s 171(3).

5 Merchant Shipping Act 1995 s 171(2). Any such Order may in particular provide, in relation to occurrences of any description specified in the Order: (1) for specified provisions of Pt VI Ch III (ss 152-171), whether as contained in Pt VI Ch III (ss 152-171) or in Pt VI Ch III (ss 152-171) set out in Sch 4, to have effect; (2) for any such provisions to have effect subject to specified modifications: s 171(2). For these purposes, 'specified' means specified in the Order: s 171(3). In exercise of the power so conferred Her Majesty made the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996, SI 1996/1143 (revoked by SI 1997/2566). As to the making of Orders in Council see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65.

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B. LIABILITY

443. Liability for oil pollution in case of tankers.

Where, as a result of any occurrence, any oil¹ is discharged or escapes² from:

- 830 (1) any ship³ constructed or adapted for carrying oil in bulk as cargo; and
- 831 (2) where any ship so constructed or adapted is capable of carrying other cargoes besides oil, any such ship while it is carrying oil in bulk as cargo and, unless it is proved that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil, but not otherwise,

the owner⁴ of the ship is liable⁵:

- 832 (a) for any damage⁶ caused outside the ship in the territory⁷ of the United Kingdom by contamination resulting from the discharge or escape; and
- 833 (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the United Kingdom by contamination resulting from the discharge or escape; and
- 834 (c) for any damage caused in the territory of the United Kingdom by any measures so taken⁸.

Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside such a ship by the contamination that might result if there were a discharge or escape of oil from the ship, the owner of the ship is liable⁹:

- 835 (i) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the United Kingdom; and
- 836 (ii) for any damage caused outside the ship in the territory of the United Kingdom by any measures so taken;

and any such threat is referred to as a relevant threat of contamination¹⁰.

Where a person incurs such a liability¹¹, he is also liable for any damage or cost for which he would be so liable if the references¹² to the territory of the United Kingdom included the territory of any other Liability Convention country¹³.

Where:

- 837 (A) as a result of any occurrence, a liability is so incurred by the owner of each of two or more ships; but
- 838 (B) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners is liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under the above provisions¹⁴.

1 For these purposes, 'oil' means persistent hydrocarbon mineral oil: Merchant Shipping Act 1995 s 170(1). As from a day to be notified in the Gazette, a reference is added to an exception for 'bunker oil' (see note 8): s 170(1) (definition prospectively amended by SI 2006/1244). At the date at which this volume states the law no such day had been notified.

2 For these purposes: (1) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; (2) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they are to be treated as one, but any measures taken after the first of them are deemed to have been taken after the discharge or escape: Merchant Shipping Act 1995 s 153(7)(a), (b). As to the meaning of 'ship' see note 3. Section s 153(7), (8) is repealed by SI 2006/1244 as from a day to be notified in the Gazette. At the date at which this volume states the law no such day had been notified.

3 For these purposes, 'ship' means, subject to the Merchant Shipping Act 1995 s 154(5) (see PARA 444), any sea-going vessel or sea-borne craft of any type whatsoever: s 170(1).

4 For these purposes, 'owner' means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a state which is operated by a person registered as the ship's operator, it means the person registered as its operator: Merchant Shipping Act 1995 s 170(1). In relation to any damage or cost resulting from the discharge or escape of any oil from a ship, or from a relevant threat of contamination, references to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape or, as the case may be, in the threat of contamination: s 170(2). As from a day to be notified in the Gazette, the 'owner' definition becomes the definition for 'registered owner' and references in s 170(2) are added to 'bunker oil' and 'registered owner': s 170(1), (2) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such day had been notified.

5 Ie except as otherwise provided by the Merchant Shipping Act 1995 Pt VI Ch III (ss 152-171): see PARA 444 et seq.

6 For these purposes, 'damage' includes loss: Merchant Shipping Act 1995 s 170(1).

See *Black v Braer Corpn* 1999 SLT 1401, OH (damage may include psychological injuries). Claims for economic loss do not come within the scope of a ship owner's liability as they are too remote: *P & O Scottish Ferries Ltd v Braer Corpn* [1999] 2 Lloyd's Rep 535, OH (decided under the former Merchant Shipping (Oil Pollution) Act 1971).

7 For these purposes, references to the territory of any country include the territorial sea of that country and: (1) in the case of the United Kingdom, any area specified by virtue of the Merchant Shipping Act 1995 s 129(2)(b) (see PARA 362); and (2) in the case of any other Liability Convention country, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by that state in question in accordance with international law: Merchant Shipping Act 1995 s 170(4) (amended by the Merchant Shipping and Maritime Security Act 1997 s 31(3), Sch 6 para 5). 'Liability Convention country' means a country in respect of which the International Convention on Civil Liability for Oil Pollution Damage 1992 is in force: Merchant Shipping Act 1995 s 152(1). As from a day to be notified in the Gazette, a reference is added in head (2) above to a Bunkers Convention country: s 170(4) (prospectively amended by SI 2006/1244). Also as from a day to be so notified 'Bunkers Convention country' means a country in respect of which the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 is in force: Merchant Shipping Act 1995 s 152(1) (definition prospectively added by SI 2006/1244). At the date at which this volume states the law no such days had been notified.

8 Merchant Shipping Act 1995 s 153(1), (3), (4). As from a day to be notified in the Gazette, in s 153(1), (2), (6) the references to 'owner' are replaced by references to 'registered owner' and a new provision is added: s 153(1), (2), (2A), (6) (s 153(1), (2), (6) prospectively amended and s 153(2A) prospectively added by SI 2006/1244). At the date at which this volume states the law no such day had been notified.

As to the application of the Merchant Shipping Act 1995 s 153 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

As from a day to be notified in the Gazette, the new provision set out below (s 153A: 'liability for oil pollution by bunker oil') is prospectively added by SI 2006/1244. Subject to the Merchant Shipping Act 1995 s 153A(3), where, as a result of any occurrence, any bunker oil is discharged or escapes from a ship then (except as

otherwise provided by Pt VI Ch III (ss 153-171) the owner of the ship is liable (1) for any damage caused outside the ship in the territory of the United Kingdom by contamination resulting from the discharge or escape; and (2) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the United Kingdom by contamination resulting from the discharge or escape; and (3) for any damage caused in the territory of the United Kingdom by any measures so taken: s 153A(1) (as so prospectively added). Subject to s 153A(3), where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship by the contamination that might result if there were a discharge or escape of bunker oil from the ship then (except as otherwise provided by Pt VI Ch III) the owner of the ship is liable (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the United Kingdom; and (b) for any damage caused outside the ship in the territory of the United Kingdom by any measures so taken: s 153A(2) (as so prospectively added). There is no liability under s 153A in relation to a discharge or escape of bunker oil from a ship to which s 153 applies; or a threat mentioned in s 153A(2) arising in relation to a potential discharge or escape of bunker oil from such a ship, where that bunker oil is also persistent hydrocarbon mineral oil: s 153A(3) (as so prospectively added). In the subsequent provisions of Pt VI Ch III a discharge or escape of bunker oil from a ship, other than a discharge or escape of oil excluded by s 153A(3), is referred to as a discharge or escape of bunker oil falling within s 153A(1); and a threat mentioned in s 153A(2), other than one excluded by s 153A(3), is referred to as a relevant threat of contamination falling within s 153A(2): s 153A(4) (as so prospectively added). Where a person incurs a liability under s 153A(1) or (2) he is also liable for any damage or cost for which he would be liable under that provision if the references in it to the territory of the United Kingdom included the territory of any other Bunkers Convention country: s 153A(5) (as so prospectively added). Where, as a result of any occurrence, a liability is incurred under s 153A by the owner of each of two or more ships, but the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable, each of the owners is liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under s 153A: s 153A(6) (as so prospectively added). In Pt VI Ch III (except in section 170(1)) 'owner', except when used in the term 'registered owner', means the registered owner, bareboat charterer, manager and operator of the ship: s 153A(7) (as so prospectively added). Also as from a day to be appointed a new definition is added for 'bunker oil' (any hydrocarbon mineral oil (including lubricating oil) which is carried by a ship and used or intended to be used for the operation or propulsion of that ship and any residues of such oil): s 170(1) (definition prospectively added by SI 2006/1244). At the date at which this volume states the law no such days had been notified.

Also as from a day to be notified in the Gazette, the new provision set out below (s 156A: 'liability under the Merchant Shipping Act 1995 s 153, s 153A or s 154: supplementary provisions') is prospectively added by SI 2006/1244. For the purposes of the Merchant Shipping Act 1995 Pt VI Ch III: (i) references to a discharge or escape of oil or bunker oil from a ship are references to such a discharge or escape wherever it may occur; (ii) references to a discharge or escape of oil from a ship include a discharge or escape of oil carried in the bunkers of the ship; (iii) where more than one discharge or escape of oil or bunker oil results from the same occurrence or from a series of occurrences having the same origin, they are treated as one, but any measures taken after the first of them are deemed to have been taken after the discharge or escape; and (iv) where a relevant threat of contamination results from a series of occurrences having the same origin, they are treated as a single occurrence: s 156A(1) (as so prospectively added). The Law Reform (Contributory Negligence) Act 1945 (see **NEGLIGENCE** vol 78 (2010) PARA 75 et seq) applies in relation to any damage or cost for which a person is liable under the Merchant Shipping Act 1995 s 153, s 153A or s 154 (see PARA 444), but which is not due to his fault, as if it were due to his fault: s 156A(2) (as so prospectively added). At the date at which this volume states the law no such day had been notified.

9 See note 5.

10 Merchant Shipping Act 1995 ss 153(2), 170(1). For these purposes, where a relevant threat of contamination results from a series of occurrences having the same origin, they are to be treated as a single occurrence: s 153(7)(c). See note 8.

11 Ie under the Merchant Shipping Act 1995 s 153(1) or (2).

12 Ie in the Merchant Shipping Act 1995 s 153(1) or (2).

13 Merchant Shipping Act 1995 s 153(5).

14 Merchant Shipping Act 1995 s 153(6). See note 8. For these purposes, the Law Reform (Contributory Negligence) Act 1945 (see **NEGLIGENCE** vol 78 (2010) PARA 75 et seq) applies in relation to any damage or cost for which a person is liable under the Merchant Shipping Act 1995 s 153, but which is not due to his fault, as if it were due to his fault: s 153(8). See note 2.

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444. Liability for oil pollution in case of other ships.

Where, as a result of any occurrence, any oil¹ is discharged or escapes² from a ship³ other than a tanker⁴, the owner⁵ of the ship is liable⁶:

- 839 (1) for any damage⁷ caused outside the ship in the territory⁸ of the United Kingdom by contamination resulting from the discharge or escape; and
- 840 (2) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the United Kingdom by contamination resulting from the discharge or escape; and
- 841 (3) for any damage so caused in the territory of the United Kingdom by any measures so taken⁹.

Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship other than a tanker¹⁰ by the contamination which might result if there were a discharge or escape of oil from the ship, the owner of the ship is liable¹¹:

- 842 (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the United Kingdom; and
- 843 (b) for any damage caused outside the ship in the territory of the United Kingdom by any measures so taken;

and any such threat is referred to as a relevant threat of contamination¹².

Where:

- 844 (i) as a result of any occurrence, a liability is incurred under the above provisions by the owner of each of two or more ships; but
- 845 (ii) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners is liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under the above provisions¹³.

1 As to the meaning of 'oil' see PARA 443 note 1.

2 As to the meaning of 'discharge or escape' see PARA 443 note 2.

3 As to the meaning of 'ship' see PARA 443 note 3. For these purposes, 'ship' includes a vessel which is not sea-going: Merchant Shipping Act 1995 s 154(5). As from a day to be appointed, an exception is added for s 154(2A) (see note 12): s 154(5) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified.

4 Ie other than a ship to which the Merchant Shipping Act 1995 s 153 applies: see PARA 443.

5 As to the meaning of 'owner' see PARA 443 note 4.

6 le except as otherwise provided by the Merchant Shipping Act 1995 Pt VI Ch III (ss 152-171): see PARA 441 et seq and PARA 445 et seq.

7 As to the meaning of 'damage' see PARA 443 note 6.

8 As to the meaning of 'territory' see PARA 443 note 7.

9 Merchant Shipping Act 1995 s 154(1). As from a day to be appointed, s 154(1), (2) is made subject to s 152(2A) (see note 12) and in s 154(1), (2), (3) references to 'owner' and 'owners' are replaced by references to 'registered owner' and 'registered owners': s 154(1)-(3) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified. As to the meaning of 'registered owner' see PARA 443 note 4. As to relevant prospectively added supplementary provisions see the Merchant Shipping Act 1995 s 156A; and PARA 443 note 8.

For the purposes of s 185 (limitation of liability for maritime claims) (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1042), any liability incurred under s 154 is deemed to be a liability to damages in respect of such damage to property as is mentioned in the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) art 2(1)(a) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 8): Merchant Shipping Act 1995 s 168. As from a day to be notified in the Gazette, an extra reference is added to the Merchant Shipping Act 1995 s 153A (see PARA 443): s 168 (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such day had been notified.

As to the application of the Merchant Shipping Act 1995 s 154 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

10 See note 4.

11 See note 6.

12 Merchant Shipping Act 1995 ss 154(2), 170(1). See note 9.

As from a day to be notified in the Gazette, new provisions set out below (see s 154(2A), (2B)) are prospectively added by SI 2006/1244. No liability is incurred under the Merchant Shipping Act 1995 s 154 by reason of (1) a discharge or escape of oil from a ship to which s 153 (see PARA 443) applies or a relevant threat of contamination falling within s 153(2); (2) a discharge or escape of bunker oil falling within s 153A(1) (see PARA 443) or a relevant threat of contamination falling within s 153A(2): s 154(2A) (as so prospectively added). In the subsequent provisions of Pt VI Ch III (ss 152-171) (a) a discharge or escape of oil from a ship, other than one excluded by s 154(2A), is referred to as a discharge or escape of oil falling within s 154(1); and (b) a threat mentioned in s 154(2), other than one excluded by s 154(2A), is referred to as a relevant threat of contamination falling within s 154(2): s 154(2B) (as so prospectively added). At the date at which this volume states the law no such day had been notified.

13 Merchant Shipping Act 1995 s 154(3). See note 9. For these purposes, the Law Reform (Contributory Negligence) Act 1945 (see **NEGLIGENCE** vol 78 (2010) PARA 75 et seq) applies in relation to any damage or cost for which a person is liable under the Merchant Shipping Act 1995 s 154, but which is not due to his fault as if it were due to his fault: s 154(4).

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445. Exceptions from liability.

No liability is incurred by the owner¹ of a ship² by reason of any discharge or escape³ of oil⁴ from the ship, or by reason of any relevant threat of contamination⁵, if he proves that the discharge or escape, or, as the case may be, the threat of contamination:

- 846 (1) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
- 847 (2) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage; or
- 848 (3) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible⁶.

1 As to the meaning of 'owner' see PARA 443 note 4.

2 le under the Merchant Shipping Act 1995 s 153 (see PARA 443) or s 154 (see PARA 444). As to the meaning of 'ship' see PARAS 443 note 3, 444 note 3.

3 As to the meaning of 'discharge or escape' see PARA 443 note 2.

4 As to the meaning of 'oil' see PARA 443 note 1.

5 As to the meaning of 'relevant threat of contamination' see PARAS 443, 444.

6 Merchant Shipping Act 1995 s 155.

As from a day to be notified in the Gazette, new provisions set out below (see s 155(1), (2)) are prospectively substituted and amended by SI 2006/1244. No liability is incurred by a person (the 'defendant') under the Merchant Shipping Act 1995 s 153, s 153A (see PARA 443) or s 154 (see PARA 444) by reason of a discharge or escape of oil or bunker oil from a ship, or of a relevant threat of contamination, if the defendant proves that s 155(2) applies: s 155(1) (as so prospectively substituted and amended). Section 155(2) applies if the discharge or escape or the relevant threat of contamination (as the case may be) (1) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or (2) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the defendant, with intent to do damage; or (3) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible: s 155(2) (as so prospectively amended). At the date at which this volume states the law no such day had been notified.

As to the application of s 155 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

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446. Restriction of liability for oil pollution.

Where, as a result of any occurrence, (1) any oil¹ is discharged or escapes² from a ship, whether a tanker³ or other ship⁴, or (2) there arises a relevant threat of contamination⁵, then, whether or not the owner⁶ of the ship in question incurs a liability under the provisions relating to oil pollution in the case of tankers⁷ or the provisions relating to oil pollution from other ships⁸:

- 849 (a) he is not liable otherwise than under those provisions⁹ for any such damage¹⁰ or cost as is mentioned in them; and
- 850 (b) no person to whom these provisions apply¹¹ is liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result¹².

The provisions in head (b) above apply to:

- 851 (i) any servant or agent of the owner of the ship;
- 852 (ii) any person not falling within head (a) above but employed or engaged in any capacity on board the ship or to perform any service for the ship;
- 853 (iii) any charterer of the ship, however described and including a bareboat charterer, and any manager or operator of the ship;
- 854 (iv) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
- 855 (v) any person taking any measures after the discharge or escape for the purpose of preventing or minimising any damage caused¹³;
- 856 (vi) any servant or agent of a person falling within head (c), (d) or (e) above¹⁴.

The liability of the owner of a ship¹⁵ for any impairment of the environment is to be taken to be a liability only in respect of any resulting loss of profits and the cost of any reasonable measures of reinstatement actually taken or to be taken¹⁶.

1 As to the meaning of 'oil' see PARA 443 note 1.

2 As to the meaning of 'discharge or escape' see PARA 443 note 2.

3 Is a ship to which the Merchant Shipping Act 1995 s 153 applies: see PARA 443.

4 Is a ship to which Merchant Shipping Act 1995 s 154 applies: see PARA 444.

5 Merchant Shipping Act 1995 s 156(1)(a), (b). As to the meaning of 'relevant threat of contamination' see PARAS 443, 444.

As from a day to be notified in the Gazette, heads (1) and (2) in the text are prospectively substituted by SI 2006/1244 as follows: (1) there is a discharge or escape of oil from a ship to which the Merchant Shipping Act 1995 s 153 (see PARA 443) applies or there arises a relevant threat of contamination falling within s 153(2); or (2) there is a discharge or escape of oil falling within s 154(1) (see PARA 444) or there arises a relevant threat of contamination falling within s 154(2). At the date at which this volume states the law no such day had been notified.

6 As to the meaning of 'owner' see PARA 443 note 4.

7 Ie the Merchant Shipping Act 1995 s 153.

8 Ie the Merchant Shipping Act 1995 s 154.

9 Ie otherwise under the Merchant Shipping Act 1995 s 153 or s 154.

10 As to the meaning of 'damage' see PARA 443 note 6.

11 Ie a person mentioned in the Merchant Shipping Act 1995 s 156(2): see heads (a)-(f) in the text.

12 Merchant Shipping Act 1995 s 156(1). As from a day to be notified in the Gazette, in s 156(1), (2) references to 'owner' are replaced by references to 'registered owner': s 156(1), (2) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified. As to the meaning of 'registered owner' see PARA 443 note 4.

As to the application of the Merchant Shipping Act 1995 s 156 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

13 Ie such measures as are mentioned in the Merchant Shipping Act 1995 s 153(1)(b) or (2)(a) (see PARA 443 heads (2), (a)) or s 154(1)(b) or (2)(a) (see PARA 444 heads (2), (a)).

14 Merchant Shipping Act 1995 s 156(2). See note 12.

As from a day to be notified in the Gazette, new provisions set out below (see s 156(2A), (2B)) are prospectively added by SI 2006/1244. Where, as a result of any occurrence (1) there is a discharge or escape of bunker oil falling within the Merchant Shipping Act 1995 s 153A(1) (see PARA 443); or (2) there arises a relevant threat of contamination falling within s 153A(2), then, whether or not the owner of the ship in question incurs any liability under s 153A (a) he is not liable otherwise than under s 153A for any such damage or cost as is mentioned in it; and (b) no person to whom this head applies is liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result: s 156(2A) (as so prospectively added). Section 156(2A)(ii) (see head (b) above) applies to (i) any servant or agent of the owner; (ii) any person not falling within head (i) above but engaged in any capacity on board the ship or to perform any service for the ship; (iii) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority; (iv) any person taking any such measures as are mentioned in s 153A(1)(b) or (2)(a) (see PARA 443 note 8 heads (2), (a)); (v) any servant or agent of a person falling within head (iii) or (iv) above: s 156(2B) (as so prospectively added). At the date at which this volume states the law no such day had been notified.

15 Ie under the Merchant Shipping Act 1995 s 153 or s 154.

16 Merchant Shipping Act 1995 s 156(3). As from a day to be notified in the Gazette, the reference to the owner of a ship under s 153 or s 154 is replaced by a reference to a person under s 153, s 153A or s 154: s 156(3) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such day had been notified.

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C. LIMITATION OF LIABILITY

447. Limitation of liability for oil pollution in case of tankers.

Where, as a result of any occurrence, the owner¹ of a ship² incurs liability for oil pollution in the case of a tanker³ by reason of a discharge or escape⁴ or by reason of any relevant threat of contamination⁵:

857 (1) he may limit that liability⁶; and

858 (2) if he does so, his liability, being the aggregate of his liabilities⁷ resulting from the occurrence, must not exceed the relevant amount⁸.

1 As to the meaning of 'owner' see PARA 443 note 4.

2 As to the meaning of 'ship' see PARA 443 note 3.

3 Liability under the Merchant Shipping Act 1995 s 153: see PARA 443.

4 As to the meaning of 'discharge or escape' see PARA 443 note 2.

5 As to the meaning of 'relevant threat of contamination' see PARA 443.

6 In accordance with the Merchant Shipping Act 1995 Pt VI Ch III (ss 152-171): see PARA 441 et seq and PARA 448 et seq.

7 In the Merchant Shipping Act 1995 s 153. See note 8.

8 Merchant Shipping Act 1995 s 157(1). As from a day to be notified in the Gazette, in s 157(1), (3) references to 'owner' are replaced by references to 'registered owner' and in s 157(1) after the reference to 'relevant threat of contamination' a reference is added to s 153(2): s 157(1), (2) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified. As to the meaning of 'registered owner' see PARA 443 note 4. For the purposes of the Merchant Shipping Act 1995 s 157(1), the 'relevant amount' means: (1) in relation to a ship not exceeding 5,000 tons, 4.51 million special drawing rights; (2) in relation to a ship exceeding 5,000 tons, 4.51 million special drawing rights together with an additional 631 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 89.77 million special drawing rights; but the Secretary of State may by order make such amendments of heads (1) and (2) above as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the limits of liability laid down in the International Convention on Civil Liability for Oil Pollution Damage 1992 art V para 1: Merchant Shipping Act 1995 s 157(2) (amended by SI 2003/2559). A ship's tonnage is its gross tonnage calculated in such manner as may be prescribed by an order made by the Secretary of State: Merchant Shipping Act 1995 s 157(4). As to the Secretary of State see PARA 58. Any such order must, so far as it appears to the Secretary of State to be practicable, give effect to the regulations in the International Convention on Tonnage Measurement of Ships 1969 (London, 23 June to 23 December 1969; TS 50 (1982); Cmnd 8716) Annex 1: Merchant Shipping Act 1995 s 157(5). As to an order made under s 157(2) see Merchant Shipping (Oil Pollution Compensation Limits) Order 2003, SI 2003/2559. As to the making of orders see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65.

The Merchant Shipping Act 1995 s 157(1) does not apply in a case where it is proved that the discharge or escape, or, as the case may be, the relevant threat of contamination, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in s 153 or recklessly and in the knowledge that any such damage or cost would probably result: s 157(3). As to prospective amendment see above.

As to the application of s 157 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

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448. Limitation actions.

Where the owner¹ of a ship² has or is alleged to have incurred a liability for oil pollution in the case of a tanker³, he may apply to the court⁴ for the limitation of that liability to a specified amount⁵.

If, on such an application, the court finds that the applicant has incurred such a liability but has not found that he is not entitled to limit it, the court must, after determining the limit of the liability and directing payment into court of the amount of that limit:

- 859 (1) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
- 860 (2) direct the distribution of the amount paid into court, or, as the case may be, so much of it as does not exceed the liability, among those persons in proportion to their claims, subject to the following provisions⁶.

A payment into court of the amount of a limit so determined must be made in sterling; and:

- 861 (a) for the purpose of converting such an amount from special drawing rights into sterling, one special drawing right is to be treated as equal to such a sum in sterling as the International Monetary Fund⁷ has fixed as being the equivalent of one special drawing right for the day on which the determination is made or, if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;
- 862 (b) a certificate given by or on behalf of the Treasury, stating that a particular sum in sterling has been so fixed for the day on which the determination was made or that no sum has been so fixed for that day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the determination was made, is conclusive evidence of those matters⁸;
- 863 (c) a document purporting to be such a certificate must, in any proceedings, be received in evidence and, unless the contrary is proved, is deemed to be such a certificate⁹.

No claim must be admitted in such proceedings unless it is made within such time as the court may direct or such further time as the court may allow¹⁰.

Where any sum has been paid in or towards satisfaction of any claim in respect of the damage¹¹ or cost to which the liability extends:

- 864 (i) by the insurer¹²; or
- 865 (ii) by a person who has or is alleged to have incurred a liability, otherwise than under the provisions relating to liability for oil pollution in the case of a tanker¹³, for the damage or cost and who is entitled to limit his liability in connection with the ship¹⁴,

the person who paid the sum is, to the extent of that sum, in the same position with respect to any distribution made in proceedings under these provisions as the person to whom it was paid would have been¹⁵.

Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended, he is in the same position with respect to any distribution made in proceedings under these provisions as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures¹⁶.

If it thinks fit, the court may postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside the United Kingdom¹⁷.

No lien or other right in respect of any ship or other property affects the proportions in which any amount is distributed in accordance with head (2) above¹⁸.

1 As to the meaning of 'owner' see PARA 443 note 4.

2 As to the meaning of 'ship' see PARA 443 note 3.

3 Ie a liability under the Merchant Shipping Act 1995 s 153: see PARA 443.

4 For these purposes, 'court' means the High Court: Merchant Shipping Act 1995 s 170(1).

5 Merchant Shipping Act 1995 s 158(1). As from a day to be notified in the Gazette, the reference to 'owner' is replaced by a reference to 'registered owner': s 158(1) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified. As to the meaning of 'registered owner' see PARA 443 note 4. For the purposes of the Merchant Shipping Act 1995 s 158(1), the specified amount is an amount determined in accordance with s 157 (see PARA 447): s 158(1). As to the application of s 158 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

6 Merchant Shipping Act 1995 s 158(2) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 4(2)(a)). Where (1) a distribution is made under the Merchant Shipping Act 1995 s 158(2)(b) (see head (2) in the text) without the court having found that the applicant is entitled to limit his liability; and (2) the court subsequently finds that the applicant is not so entitled, the making of the distribution is not to be regarded as affecting the applicant's liability in excess of the amount distributed: s 158(2A) (added by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 4(3)).

7 As to the International Monetary Fund see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 533; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1391.

8 Ie for the purposes of the Merchant Shipping Act 1995 Pt VI Ch III (ss 152-171): see PARA 441 et seq and PARA 449 et seq.

9 Merchant Shipping Act 1995 s 158(3). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

10 Merchant Shipping Act 1995 s 158(4).

11 As to the meaning of 'damage' see PARA 443 note 6.

12 Ie the person referred to in the Merchant Shipping Act 1995 s 165 (see PARA 455) as the 'insurer'.

13 Ie the Merchant Shipping Act 1995 s 153.

14 Ie by virtue of the Merchant Shipping Act 1995 s 185 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1042) or s 186 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1059).

15 Merchant Shipping Act 1995 s 158(5). As from a day to be notified in the Gazette, the reference to 'owner' is replaced by a reference to 'registered owner' and after the reference to "'the insurer'" there is added '(in relation to any insurance or other security provided as mentioned in s 165(1))': s 158(1) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified.

- 16 Merchant Shipping Act 1995 s 158(6).
- 17 Merchant Shipping Act 1995 s 158(7).
- 18 Merchant Shipping Act 1995 s 158(8).

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449. Restriction on enforcement after establishment of limitation fund.

Where the court¹ has found that a person who has incurred a liability for oil pollution² is entitled to limit that liability to any amount and he has paid into court a sum not less than that amount:

- 866 (1) the court must order the release of any ship³ or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and
- 867 (2) no judgment or decree for any such claim may be enforced, except so far as it is for costs,

if the sum paid into court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings⁴ had been taken⁵.

1 As to the meaning of 'court' see PARA 448 note 4.

2 Ie under the Merchant Shipping Act 1995 s 153: see PARA 443.

3 As to the meaning of 'ship' see PARA 443 note 3.

4 Ie under the Merchant Shipping Act 1995 s 158: see PARA 448.

5 Merchant Shipping Act 1995 s 159(1). As to the application of s 159 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

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450. Concurrent liabilities of owners and others.

Where, as a result of any discharge or escape¹ of oil² from a ship³ or as a result of any relevant threat of contamination⁴, the owner⁵ of the ship incurs a liability under the provisions relating to liability for oil pollution in the case of tankers⁶ and any other person incurs a liability, otherwise than under those provisions, for any damage⁷ or cost⁸, then, if:

- 868 (1) the owner has been found in proceedings⁹ to be entitled to limit his liability to any amount and has paid into court a sum not less than that amount; and
- 869 (2) the other person is entitled to limit his liability in connection with the ship¹⁰,

no proceedings may be taken against the other person in respect of his liability; and, if any such proceedings were commenced before the owner paid the sum into court, no further steps may be taken in the proceedings except in relation to costs¹¹.

1 As to the meaning of 'discharge or escape' see PARA 443 note 2.

2 As to the meaning of 'oil' see PARA 443 note 1.

3 As to the meaning of 'ship' see PARA 443 note 3.

4 As to the meaning of 'relevant threat of contamination' see PARA 443.

5 As to the meaning of 'owner' see PARA 443 note 4.

6 Ie a liability under the Merchant Shipping Act 1995 s 153: see PARA 443.

7 As to the meaning of 'damage' see PARA 443 note 6.

8 Ie any such damage or cost as is mentioned in the Merchant Shipping Act 1995 s 153(1) or (2).

9 Ie proceedings under the Merchant Shipping Act 1995 s 158: see PARA 448.

10 Ie under the Merchant Shipping Act 1995 s 185 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1042) or s 186 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1059).

11 Merchant Shipping Act 1995 s 160. As from a day to be notified in the Gazette, the reference to 'owner' is replaced by a reference to 'registered owner': s 160 (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified. As to the meaning of 'registered owner' see PARA 443 note 4.

As to the application of the Merchant Shipping Act 1995 s 160 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

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451. Establishment of limitation fund outside the United Kingdom.

Where the events resulting in the liability of any person for oil pollution¹ also resulted in a corresponding liability under the law of another Liability Convention country², the provisions relating to the restriction on enforcement after the establishment of a limitation fund³ and the concurrent liabilities of owners and others⁴ apply as if the references to the provisions relating to liability for oil pollution in case of tankers⁵ and limitation actions⁶ included references to the corresponding provisions of that law and the references to sums paid into court included references to any sums secured under those provisions in respect of the liability⁷.

1 Ie under the Merchant Shipping Act 1995 s 153: see PARA 443.

2 As to the meaning of 'Liability Convention country' see PARA 443 note 7.

3 Ie the Merchant Shipping Act 1995 s 159: see PARA 449.

4 Ie the Merchant Shipping Act 1995 s 160: see PARA 450.

5 Ie the Merchant Shipping Act 1995 s 153.

6 Ie the Merchant Shipping Act 1995 s 158: see PARA 448.

7 Merchant Shipping Act 1995 s 161. As to the application of s 161 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

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452. Extinguishment of claims.

No action to enforce a claim in respect of a liability for oil pollution¹ may be entertained by any court in the United Kingdom unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape², or, as the case may be, in the relevant threat of contamination³, by reason of which the liability was incurred⁴.

1 In a liability incurred under the Merchant Shipping Act 1995 s 153 (see PARA 443) or s 154 (see PARA 444). See note 4.

2 As to the meaning of 'discharge or escape' see PARA 443 note 2. An action for loss must be brought within three years of the date when the claim arose and in any event not later than six years after the occurrence or the first of the relevant occurrences: *Gray v Braer Corp* [1999] 2 Lloyd's Rep 541, 1999 SLT 1410, OH (decided under the former Merchant Shipping (Oil Pollution) Act 1971 s 9).

3 As to the meaning of 'relevant threat of contamination' see PARAS 443, 444.

4 Merchant Shipping Act 1995 s 162. As from a day to be notified in the Gazette, a reference is added also to s 153A (see PARA 443): s 162 (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified.

As to the application of the Merchant Shipping Act 1995 s 162 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

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D. COMPULSORY INSURANCE

453. Compulsory insurance against liability for pollution.

Any ship¹ carrying in bulk a cargo of more than 2,000 tons of oil² of a description specified in regulations made by the Secretary of State must not enter or leave a port³ in the United Kingdom or arrive at or leave a terminal in the territorial sea of the United Kingdom⁴ nor, if the ship is a United Kingdom ship⁵, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the following provisions and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the specified requirements⁶.

If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention⁷ of the above provisions⁸, the master⁹ or owner¹⁰ is liable to a fine¹¹.

If a ship attempts to leave a port in the United Kingdom in contravention of the above provisions, the ship may be detained¹².

The certificate must be:

- 870 (1) if the ship is a United Kingdom ship, a certificate issued by the Secretary of State;
- 871 (2) if the ship is registered in a Liability Convention country¹³ other than the United Kingdom, a certificate issued by or under the authority of the government of the other Liability Convention country; and
- 872 (3) if the ship is registered in a country which is not a Liability Convention country, a certificate issued by the Secretary of State or by or under the authority of the government of any Liability Convention country other than the United Kingdom¹⁴.

Any certificate so required to be in force in respect of a ship must be carried in the ship and must, on demand, be produced by the master to any officer of customs and excise or of the Secretary of State and, if the ship is a United Kingdom ship, to any proper officer¹⁵.

If a ship fails to carry, or the master of a ship fails to produce, a certificate as so required, the master is liable to a fine¹⁶.

1 As to the meaning of 'ship' see PARA 443 note 3.

2 As to the meaning of 'oil' see PARA 443 note 1.

3 As to the meaning of 'port' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49.

4 As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

5 As to the meaning of 'United Kingdom ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 230.

6 Merchant Shipping Act 1995 s 163(1), (2). The requirements so specified are those of the International Convention on Civil Liability for Oil Pollution 1992 art VII: Merchant Shipping Act 1995 s 163(2). Section 163(1) is subject to the provisions of Pt VI Ch III (ss 152-171) (see PARA 441 et seq and PARA 454 et seq) relating to government ships: s 163(1). As to the meaning of 'government ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 20 note 3. As to the application of s 163 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

As to regulations made under s 163(1) see the Oil Pollution (Compulsory Insurance) Regulations 1997, SI 1997/1820 (amended by SI 2006/2055). As to the making of regulations generally see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65; and as to the Secretary of State's power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41.

As from a day to be notified in the Gazette, the new provision set out below (s 163A: 'compulsory insurance against liability for pollution by bunker oil') is prospectively added by SI 2006/1244. Subject to the provisions of the Merchant Shipping Act 1995 Pt VI Ch III relating to Government ships, s 163A(2) (see below) applies to any ship having a gross tonnage greater than 1,000 tons calculated in the manner prescribed by an order made by the Secretary of State under Sch 7 Pt II para 5(2) (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1048): s 163A(1) (as so prospectively added). The ship must not enter or leave a port in the United Kingdom or arrive at or leave a terminal in the territorial sea of the United Kingdom nor, if the ship is a United Kingdom ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force (1) a contract of insurance or other security in respect of the ship satisfying the requirements of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 art 7; and (2) a certificate complying with the provisions of the Merchant Shipping Act 1995 s 163A(3) (see below) showing that there is in force in respect of the ship a contract of insurance or other security satisfying those requirements: s 163A(2) (as so prospectively added). The certificate must be (a) if the ship is a United Kingdom ship, a certificate issued by the Secretary of State; (b) if the ship is registered in a Bunkers Convention country other than the United Kingdom, a certificate issued by or under the authority of the government of the other Bunkers Convention country; and (c) if the ship is registered in a country which is not a Bunkers Convention country, a certificate issued by the Secretary of State or by or under the authority of the government of any Bunkers Convention country other than the United Kingdom: s 163A(3) (as so prospectively added). Any certificate required by s 163A to be in force in respect of a ship must be carried in the ship and must, on demand, be produced by the master to any officer of Revenue and Customs or of the Secretary of State and, if the ship is a United Kingdom ship, to any proper officer: s 163A(4) (as so prospectively added). If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of s 163A(2) by reason of there being no certificate in force as mentioned in that provision, the master or registered owner is liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum: s 163A(5) (as so prospectively added). If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by s 163A(4), the master is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 163A(6) (as so prospectively added). If a ship attempts to leave a port in the United Kingdom in contravention of s 163A(2), the ship may be detained: s 163A(7) (as so prospectively added). Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of (or otherwise in connection with) proceedings for an offence under s 163A(5) against the company as registered owner of the ship is treated as duly served on the company if the document is served on the master of the ship and for these purposes, 'foreign company' means a company or body which is not one to which the Companies Act 2006 s 1139 (see companies) applies so as to authorise the service of the document in question: Merchant Shipping Act 1995 s 163A(8) (as so prospectively added; and amended by SI 2009/1941). Any person authorised to serve any document for the purposes of the institution of (or otherwise in connection with) the institution of proceedings for an offence under the Merchant Shipping Act 1995 s 163A has, for that purpose, the right to go on board the ship in question: s 163A(9) (as so prospectively added). In the case of a ship of which, at any relevant time, the tonnage has not been and cannot be ascertained in the manner set out in s 163A(1), the best available evidence must be used in calculating the tonnage of the ship in accordance with any order under Sch 7 Pt II para 5(2): s 163A(10) (as so prospectively added). At the date at which this volume states the law no such day had been notified. As to the meaning of 'Bunkers Convention country' see PARA 443 note 7. As to the meaning of 'registered owner' see PARA 443 note 4. As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

7 As to the meaning of 'contravention' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 note 3.

8 le the Merchant Shipping Act 1995 s 163(2).

9 As to the meaning of 'master' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 424.

10 As to the meaning of 'owner' see PARA 443 note 4.

11 Merchant Shipping Act 1995 s 163(5). The master or owner is liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding £50,000: see s 163(5). As from a day to be notified in the

Gazette, the reference to 'owner' is replaced by a reference to 'registered owner': s 163(5) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified.

As to the time limit for summary offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1100; as to offences by officers of bodies corporate see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1102; as to jurisdiction in relation to offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1103; as to jurisdiction over ships lying off the coast see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1104; as to jurisdiction in the case of offences on board ship see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1105; as to offences committed by British seamen see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1106; and as to proof etc of exemption see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1112.

12 Merchant Shipping Act 1995 s 163(7).

13 As to the meaning of 'Liability Convention country' see PARA 443 note 7.

14 Merchant Shipping Act 1995 s 163(3). As to the issue of the certificate see PARA 454.

15 Merchant Shipping Act 1995 s 163(4). As to the meaning of 'proper officer' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 48 note 11.

16 Merchant Shipping Act 1995 s 163(6). The master is liable on summary conviction to a fine not exceeding level 4 on the standard scale: see s 163(6).

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454. Issue of certificate by the Secretary of State.

If the Secretary of State is satisfied, on the application for a certificate of compulsory insurance¹ in respect of a United Kingdom ship² or a ship registered in any country which is not a Liability Convention country³, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the specified requirements⁴, the Secretary of State must issue such a certificate to the owner⁵.

If, however, the Secretary of State is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability⁶ in all circumstances, he may refuse the certificate⁷.

The Secretary of State may make regulations providing for the cancellation and delivery up of a certificate under these provisions in such circumstances as may be prescribed by the regulations⁸. If a person required by such regulations to deliver up a certificate fails to do so, he is liable to a fine⁹.

The Secretary of State must send a copy of any certificate so issued by him in respect of a United Kingdom ship to the Registrar General of Shipping and Seamen¹⁰; and the Registrar must make the copy available for public inspection¹¹.

1 le such a certificate as is mentioned in the Merchant Shipping Act 1995 s 163: see PARA 453. See note 5.

2 As to the meaning of 'United Kingdom ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 230.

3 As to the meaning of 'Liability Convention country' see PARA 443 note 7.

4 le the requirements of the International Convention on Civil Liability for Oil Pollution 1992 art VII.

5 Merchant Shipping Act 1995 s 164(1). As to the Secretary of State see PARA 58. As to the meaning of 'owner' see PARA 443 note 4. As to the fee for the issue of a certificate under s 164 see the Merchant Shipping (Fees) Regulations 2006, SI 2006/2055, Sch 1 Pt 12.

As from a day to be notified in the Gazette, the reference to the Merchant Shipping Act 1995 's 163' is changed to a reference to 's 163(2)' and the reference to 'owner' is replaced by a reference to 'registered owner': s 164(1) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified. As to the meaning of 'registered owner' see PARA 443 note 4.

Also as from a day to be notified in the Gazette, a new provision is added as follows: Subject to the Merchant Shipping Act 1995 s 164(2), if the Secretary of State is satisfied, on the application for such a certificate as is mentioned in s 163A(2) (see PARA 453) in respect of a United Kingdom ship or a ship registered in any country which is not a Bunkers Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 art 7, the Secretary of State must issue such a certificate to the registered owner: Merchant Shipping Act 1995 s 164(1A) (prospectively added by SI 2006/1244). At the date at which this volume states the law no such days had been notified. As to the meaning of 'Bunkers Convention country' see PARA 443 note 7.

As to the application of the Merchant Shipping Act 1995 s 164 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

6 le under Merchant Shipping Act 1995 s 153: see PARA 443.

7 Merchant Shipping Act 1995 s 164(2).

As from a day to be notified in the Gazette, there is a replacement provision as follows: The Secretary of State may refuse the certificate if he is of the opinion that there is a doubt whether (1) the person providing the insurance or other security will be able to meet his obligations thereunder; or (2) the insurance or other security will cover the registered owner's liability under s 153 (see PARA 443), or the owner's liability under s 153A (see PARA 443), as the case may be: s 164(2) (prospectively substituted by SI 2006/1244). At the date at which this volume states the law no such days had been notified.

8 Merchant Shipping Act 1995 s 164(3). As to regulations made under s 163(1) see the Oil Pollution (Compulsory Insurance) Regulations 1997, SI 1997/1820 (amended by SI 2006/2055). As to the making of regulations generally see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65; and as to the Secretary of State's power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41.

9 Merchant Shipping Act 1995 s 164(4). Such a person is liable on summary conviction to a fine not exceeding level 4 on the standard scale: see s 164(4). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the time limit for summary offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1100; as to offences by officers of bodies corporate see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1102; as to jurisdiction in relation to offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1103; as to jurisdiction over ships lying off the coast see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1104; as to jurisdiction in the case of offences on board ship see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1105; as to offences committed by British seamen see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1106; and as to proof etc of exemption see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1112.

10 As to the Registrar General of Shipping and Seamen see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 61.

11 Merchant Shipping Act 1995 s 164(5). As to the inspection of copies of documents which are open to public inspection see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1111.

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455. Rights of third parties against insurers.

Where it is alleged that the owner¹ of a ship² has incurred a liability³ as a result of any discharge or escape⁴ of oil⁵ occurring, or as a result of any relevant threat of contamination⁶ arising, while there was in force a contract of insurance or other security to which a certificate of compulsory insurance⁷ related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (the 'insurer')⁸.

In any proceedings so brought against the insurer it is a defence, in addition to any defence affecting the owner's liability, to prove that the discharge or escape, or, as the case may be, the threat of contamination, was due to the wilful misconduct of the owner himself⁹.

The insurer may limit his liability in respect of claims so made in like manner and to the same extent as the owner may limit his liability; but the insurer may do so whether or not the discharge or escape, or, as the case may be, the threat of contamination, resulted from anything done or omitted to be done¹⁰ by the owner either with intent to cause damage or cost¹¹ or recklessly and in the knowledge that any such damage or cost would probably result¹².

Where the owner and the insurer each apply to the court¹³ for the limitation of his liability, any sum paid into court in pursuance of either application is to be treated as paid also in pursuance of the other¹⁴.

1 As to the meaning of 'owner' see PARA 443 note 4.

2 As to the meaning of 'ship' see PARA 443 note 3.

3 Ie a liability under the Merchant Shipping Act 1995 s 153: see PARA 443.

4 As to the meaning of 'discharge or escape' see PARA 443 note 2.

5 As to the meaning of 'oil' see PARA 443 note 1.

6 As to the meaning of 'relevant threat of contamination' see PARA 443.

7 Ie such a certificate as is mentioned in the Merchant Shipping Act 1995 s 163: see PARA 453.

8 Merchant Shipping Act 1995 s 165(1).

As from a day to be notified in the Gazette, the reference to 'owner' is replaced by a reference to 'registered owner', the reference to 's 163' is changed to a reference to 's 163(2)' and the reference to '("the insurer")' is removed: s 165(1) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified. As to the meaning of 'registered owner' see PARA 443 note 4.

Also as from a day to be notified in the Gazette, new provisions are added as follows: Where it is alleged that the owner of a ship has incurred a liability under the Merchant Shipping Act 1995 s 153A (see PARA 443) as a result of any discharge or escape of bunker oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in s 163A(2) (see PARA 453) related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security: s 165(1A) (s 165(1A), (1B) prospectively added by SI 2006/1244). In the following provisions of the Merchant Shipping Act 1995 s 165, 'insurer' means the person who provided the insurance or other security referred to in s 165(1) or s 165(1A), as the case may be: s 165(1B) (as so prospectively added). At the date at which this volume states the law no such days had been notified.

As to the application of s 165 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

9 Merchant Shipping Act 1995 s 165(2).

As from a day to be notified in the Gazette, there is revision so that the reference is to proceedings being brought 'in respect of liability under s 153', the reference to 'owner's' is replaced by a reference to 'registered owner's' and the reference to 'owner' is replaced by a reference to 'registered owner': s 165(2) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified.

10 If anything done or omitted to be done by the owner as mentioned in the Merchant Shipping Act 1995 s 157(3): see PARA 447.

11 If any such damage or cost as is mentioned in the Merchant Shipping Act 1995 s 153.

12 Merchant Shipping Act 1995 s 165(3).

As from a day to be notified in the Gazette, there is revision so that the reference is to proceedings being brought 'in respect of liability under s 153' and the limitation of liability is 'under s 157' and the references to 'owner' are replaced by references to 'registered owner': s 165(2) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such days had been notified.

13 As to the meaning of 'court' see PARA 448 note 4.

14 Merchant Shipping Act 1995 s 165(4). The Third Parties (Rights against Insurers) Act 1930 (see **INSURANCE** vol 25 (2003 Reissue) PARA 678 et seq) does not apply in relation to any contract of insurance to which such a certificate as is mentioned in the Merchant Shipping Act 1995 s 163 relates: s 165(5).

As from a day to be notified in the Gazette, there is revision of s 165(4) so that the reference to 'owner' is replaced by a reference to 'registered owner' and after the reference to applying to the court for the elimination of liability there is a reference to 'in relation to liability under s 153': s 165(4) (prospectively amended by SI 2006/1244). Also as from a day to be notified in the Gazette, in the Merchant Shipping Act 1995 s 165(5) after the reference to 's 163' an additional reference is added to 's 163A': s 165(4) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such day or days had been notified.

Also as from a day to be notified in the Gazette, new provisions are added as follows: In any proceedings brought against the insurer by virtue of the Merchant Shipping Act 1995 s 165 in respect of liability under s 153A (see PARA 443) it is a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the wilful misconduct of the owner himself: s 165(4A) (s 165(4A)-(4C) prospectively added by SI 2006/1244). The insurer may limit his liability in respect of claims in respect of liability under the Merchant Shipping Act 1995 s 153A which are made against him by virtue of s 165 in like manner and to the same extent as the owner may limit his liability by virtue of s 185 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1042); but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from any act or omission mentioned in the Convention on Limitation of Liability for Maritime Claims 1976 art 4 set out in the Merchant Shipping Act 1995 Sch 7 Pt I (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1046): s 165(4B) (as so prospectively added). Where the owner and the insurer each apply to the court for the limitation of his liability (in relation to liability under s 153A) any sum paid into court in pursuance of either application is treated as paid also in pursuance of the other: s 165(4C) (as so prospectively added). At the date at which this volume states the law no such day or days had been notified.

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E. SUPPLEMENTARY PROVISIONS

456. Jurisdiction of United Kingdom courts; registration of foreign judgments.

Where:

873 (1) any oil¹ is discharged or escapes² from a ship³ but does not result in any damage⁴ caused by contamination in the territory⁵ of the United Kingdom and no measures are reasonably taken to prevent or minimise such damage in that territory; or

874 (2) any relevant threat of contamination⁶ arises but no measures are reasonably taken to prevent or minimise such damage in the territory of the United Kingdom,

no court in the United Kingdom may entertain any action, whether in rem or in personam, to enforce a claim arising from any relevant damage or cost⁷:

875 (a) against the owner⁸ of the ship; or

876 (b) against any specified person⁹ unless any such damage or cost resulted from anything done or omitted to be done¹⁰ by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result¹¹.

1 As to the meaning of 'oil' see PARA 443 note 1.

2 As to the meaning of 'discharge or escape' see PARA 443 note 2.

3 As to the meaning of 'ship' see PARA 443 note 3.

4 As to the meaning of 'damage' see PARA 443 note 6.

5 As to the meaning of 'territory' see PARA 443 note 7.

6 As to the meaning of 'relevant threat of contamination' see PARAS 443, 444.

7 For these purposes, 'relevant damage or cost' means: (1) in relation to any such discharge or escape as is mentioned in the Merchant Shipping Act 1995 s 166(2)(a) (see head (1) in the text), any damage caused in the territory of another Liability Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country; (2) in relation to any such threat of contamination as is mentioned in s 166(2)(b) (see head (2) in the text), any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country; or (3) any damage caused by any measures taken as mentioned in s 166(3)(a) or (b) (see heads (1), (2) above); and s 156(2)(e) (see PARA 446 head (v)) has effect for the purposes of s 166(2)(ii) (see head (b) in the text) as if it referred to any person taking any such measures as are mentioned in s 166(3)(a) or (b): s 166(3). As to the meaning of 'damage' see PARA 443 note 6; and as to the meaning of 'Liability Convention country' see PARA 443 note 7.

8 As to the meaning of 'owner' see PARA 443 note 4.

9 Ie any person to whom the Merchant Shipping Act 1995 s 156(1)(ii) applies: see PARA 446 head (b).

10 le anything done or omitted to be done as mentioned in the Merchant Shipping Act 1995 s 156(1)(ii).

11 Merchant Shipping Act 1995 s 166(2).

As from a day to be notified in the Gazette, there are a number of revisions to s 166(2) as follows: (1) in head (1) in the text the words 'any oil is discharged or escapes from a ship but' are replaced by the words 'there is a discharge or escape of oil from a ship to which s 153 applies, or a discharge or escape of oil falling within s 154(1), which'; (2) in head (2) in the text after the reference to 'any relevant threat of contamination' there is added the words 'falling within s 153(2) or s 154(2)'; and (3) in head (a) in the text the reference to 'owner' is replaced by a reference to 'registered owner': s 166(2) (prospectively amended by SI 2006/1244). At the date at which this volume states the law no such day had been notified. As to the meaning of 'registered owner' see PARA 443 note 4.

Also as from a day to be notified in the Gazette, new provisions are added as follows: Where (a) there is a discharge or escape of bunker oil falling within the Merchant Shipping Act 1995 s 153A(1) (see PARA 443) which does not result in any damage caused by contamination in the territory of the United Kingdom and no measures are reasonably taken to prevent or minimise such damage in that territory; or (b) any relevant threat of contamination falling within s 153A(2) (see PARA 443) arises but no measures are reasonably taken to prevent or minimise such damage in the territory of the United Kingdom, no court in the United Kingdom may entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost (i) against the owner of the ship; or (ii) against any person to whom s 156(2A)(ii) (see PARA 446 note 14 head (b)) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision: s 166(3A) (s 166(3A), (3B) prospectively added by SI 2006/1244). In the Merchant Shipping Act 1995 s 166(3A), 'relevant damage or cost' means (A) in relation to any such discharge or escape as is mentioned in s 166(3A)(a) (see head (a) above), any damage caused in the territory of another Bunkers Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country; (B) in relation to any such threat of contamination as is mentioned in s 166(3A)(b) (see head (b) above), any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country; or (C) any damage caused by any measures taken as mentioned in head (A) or (B) above; and s 156(2B)(d) (see PARA 446 note 14 head (iv)) has effect for the purpose of s 166(3A)(ii) (see head (ii) above) as if it referred to any person taking any such measures as are mentioned in head (A) or head (B) above: s 166(3B) (as so prospectively added). At the date at which this volume states the law no such day had been notified. As to the meaning of 'Bunkers Convention country' see PARA 443 note 7.

As to the application of s 166 to warships and ships used by the government of any state for other than commercial purposes see PARA 457; and as to savings for recourse actions see PARA 458.

The Foreign Judgments (Reciprocal Enforcement) Act 1933 Pt I (ss 1-7) (see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 171 et seq) applies, whether or not it would so apply apart from the Merchant Shipping Act 1995 s 166, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to s 153 (see PARA 443); and in its application to such a judgment the Foreign Judgments (Reciprocal Enforcement) Act 1933 Pt I has effect with the omission of s 4(2), (3) (see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARAS 177, 178): Merchant Shipping Act 1995 s 166(4).

Also as from a day to be notified in the Gazette, there is a replacement to s 166(4) as follows: The Foreign Judgments (Reciprocal Enforcement) Act 1933 Pt I (ss 1-7) applies, whether or not it would so apply apart from the Merchant Shipping Act 1995 s 166, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to s 153 (see PARA 443); and (b) any judgment given by a court in a Bunkers Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to s 153A (see PARA 443); and in its application to any such judgment Foreign Judgments (Reciprocal Enforcement) Act 1933 Pt I has effect with the omission of s 4(2), (3): Merchant Shipping Act 1995 s 166(4) (prospectively substituted by SI 2006/1244). At the date at which this volume states the law no such day had been notified.

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457. Government ships.

Nothing in the provisions relating to liability for oil pollution¹ applies in relation to any warship or any ship² for the time being used by the government of any state for other than commercial purposes³.

Every Liability Convention state⁴ is deemed, for the purposes of any proceedings brought in a court in the United Kingdom to enforce a claim in respect of a liability for oil pollution in the case of a tanker⁵, to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this provision authorises the issue of execution against the property of any state⁶.

1 le the Merchant Shipping Act 1995 ss 152-166: see PARA 441 et seq.

2 As to the meaning of 'ship' see PARA 443 note 3.

3 Merchant Shipping Act 1995 s 167(1). In relation to a ship owned by a state and for the time being used for commercial purposes, it is a sufficient compliance with s 163(2) (see PARA 453) if there is in force a certificate issued by the government of that state and showing that the ship is owned by that state and that any liability for pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage 1992 art I will be met up to the limit prescribed by art V: Merchant Shipping Act 1995 s 167(2).

As from a day to be notified in the Gazette, there is a replacement to s 167(2) as follows: In relation to a ship owned by a state and for the time being used for commercial purposes (1) it is sufficient compliance with s 163(2) (see PARA 453) if there is in force a certificate issued by the government of that state and showing that the ship is owned by that state and that any liability for pollution damage as defined in International Convention on Civil Liability for Oil Pollution Damage 1992 art I will be met up to the limit prescribed by art V; and (2) it is sufficient compliance with s 163A(2) (see PARA 453) if there is in force a certificate issued by the government of that state and showing that the ship is owned by that state and that any liability for pollution damage as defined in the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 art 1 be met up to the limits set out in the Convention on Limitation of Liability for Maritime Claims 1976 Ch II in the Merchant Shipping Act 1995 Sch 7 Pt I (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1048 et seq): Merchant Shipping Act 1995 s 167(2) (prospectively substituted by SI 2006/1244). Also as from a day to be notified in the Gazette, 'Bunkers Convention state' means a state which is party to the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001: Merchant Shipping Act 1995 s 152(1) (definition prospectively added by SI 2006/1244). At the date at which this volume states the law no such day or days had been notified.

4 For these purposes, 'Liability Convention state' means a state which is a party to the International Convention on Civil Liability for Oil Pollution Damage 1992: Merchant Shipping Act 1995 s 152(1).

5 le liability incurred under the Merchant Shipping Act 1995 s 153: see PARA 443.

6 Merchant Shipping Act 1995 s 167(3). As to the meaning of 'United Kingdom' see PARA 1 note 2.

As from a day to be notified in the Gazette, a new provision is added as follows: Every Bunkers Convention state is deemed, for the purposes of any proceedings brought in a court in the United Kingdom to enforce a claim in respect of a liability incurred under s 153A (see PARA 443), to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this provision authorises the issue of execution against the property of any state: s 167(4) (prospectively added by SI 2006/1244). At the date at which this volume states the law no such day had been notified.

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458. Saving for recourse actions.

Nothing in the provisions relating to liability for oil pollution¹ prejudices any claim, or the enforcement of any claim, a person incurring any liability under those provisions may have against another person in respect of that liability².

1 Ie the Merchant Shipping Act 1995 Pt VI Ch III (ss 152-171): see PARA 441 et seq.

2 Merchant Shipping Act 1995 s 169.

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(vii) International Oil Pollution Compensation Fund

A. IN GENERAL

459. Parties to the Fund Convention.

If Her Majesty by Order in Council declares that any state specified in the Order is a party to the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (the 'Fund Convention'), in respect of any country so specified, the Order is conclusive evidence, while in force, that that state is a party to the Fund Convention in respect of that country¹. This² also applies in relation to the Protocol of 2003 to the Fund Convention (the 'Supplementary Fund Protocol') as it applies in relation to the Fund Convention³.

1 Merchant Shipping Act 1995 s 172(1)(b), (2). At the date at which this volume states the law no such Order in Council had been made. Section 306(3) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41) does not apply to a statutory instrument containing an Order in Council under s 172(2): s 306(3).

The termination of the membership of Her Majesty's government in the United Kingdom of the 1971 Fund does not affect the application to that Fund of the International Organisations Act 1968 s 1 (see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 309): Merchant Shipping and Maritime Security Act 1997 ss 27(2), 31(3). For these purposes, '1971 Fund' means the International Oil Pollution Compensation Fund established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 opened for signature in Brussels on 18 December 1971 (TS 95 (1978); Cmnd 7383): Merchant Shipping and Maritime Security Act 1997 s 27(1).

2 Ie the Merchant Shipping Act 1995 s 172(2).

3 Merchant Shipping Act 1995 s 172(3) (added by SI 2006/1265). At the date at which this volume states the law no such Order in Council had been made. See note 1.

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460. Power to make transitional provisions.

Until 30 May 1996 alternative provisions¹ relating to the International Oil Pollution Compensation Fund had effect².

Her Majesty may³ by Order in Council make such provision as appears to Her Majesty to be appropriate in connection with the implementation of any transitional provisions contained in the 1992 Protocol⁴ or the Conventions which they amend⁵.

1 Ie the provisions set out in the Merchant Shipping Act 1995 s 182(1), Sch 4 as Pt VI Ch IV (ss 172-182).

2 Merchant Shipping Act 1995 s 182(1); Merchant Shipping Act 1995 (Appointed Day No 1) Order 1996, SI 1996/1210, art 2.

3 Ie notwithstanding the Merchant Shipping Act 1995 s 182(1).

4 For these purposes, '1992 Protocol' means the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Brussels, 18 December 1971; TS 95 (1978); Cmnd 7383) signed in London on 27 November 1992: Merchant Shipping Act 1995 s 182(3).

5 Merchant Shipping Act 1995 s 182(2). Any such Order may in particular provide, in relation to occurrences of any description specified in the Order: (1) for specified provisions of Pt VI Ch IV (ss 172-182), whether as contained in Pt VI Ch IV (ss 172-182) or in Pt VI Ch IV (ss 172-182) set out in Sch 4, to have effect; (2) for any such provisions to have effect subject to specified modifications: s 182(2). For these purposes, 'specified' means specified in the Order: s 182(3). In exercise of the power so conferred Her Majesty made the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996, SI 1996/1143 (revoked by SI 1997/2566). As to the making of Orders in Council see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65.

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461. Power to give effect to the Supplementary Fund Protocol.

Her Majesty may by Order in Council make such provision as she considers appropriate for the purpose of giving effect to the Supplementary Fund Protocol¹ and any international agreement relating to compensation for oil pollution from ships which modifies, or replaces the whole or any part of, the Liability Convention², the Fund Convention or the Supplementary Fund Protocol³. Such an order may, in particular:

- 877 (1) require contributions to be paid to an international compensation fund in accordance with the international agreement to which the order relates;
- 878 (2) authorise the Secretary of State to make an order by statutory instrument⁴;
- 879 (3) provide for the delegation of functions exercisable by virtue of the order;
- 880 (4) create summary offences or offences triable either way⁵;
- 881 (5) make provision with respect to the extra-territorial operation of the order;
- 882 (6) make provision with respect to the application of the order in relation to the Crown⁶;

Such an order may not make provision taking effect before ratification by the United Kingdom of the international agreement to which it relates unless the provisions appear to Her Majesty to be necessary to enable the United Kingdom to meet a requirement imposed on a state wishing to ratify the agreement⁷. No recommendation may be made to Her Majesty to make an Order in Council unless a draft of the order has been laid before and approved by a resolution of each House of Parliament, the order relates to the Supplementary Fund Protocol, or the order extends only to specified possessions⁸.

1 'Supplementary Fund Protocol' means the Protocol of 2003 to the Fund Convention, which establishes the Supplementary Fund for pollution damage claims and provides for contributions to, and payments of compensation by, that Fund: Merchant Shipping (Pollution) Act 2006 s 1(1)(a). 'Fund Convention' has the same meaning as in the Merchant Shipping Act 1995 s 172 (see PARA 459): Merchant Shipping (Pollution) Act 2006 s 1(1)(b). A statutory instrument containing an Order in Council which relates only to the Supplementary Fund Protocol is subject to annulment in pursuance of a resolution of either House of Parliament: see s 1(7).

2 'Liability Convention' has the same meaning as in the Merchant Shipping Act 1995 s 172 (see PARA 441): Merchant Shipping (Pollution) Act 2006 s 1(1)(b).

3 Merchant Shipping (Pollution) Act 2006 s 1(2). As to an order under s 1(2), (4)-(6) see the Merchant Shipping (Oil Pollution) (Supplementary Fund Protocol) Order 2006, SI 2006/1265.

4 This is subject to annulment in pursuance of a resolution of either House of Parliament: see the Merchant Shipping (Pollution) Act 2006 s 1(7).

5 This is subject to the limitation that the order may not authorise the imposition, on conviction on indictment, of a term of imprisonment exceeding two years: see the Merchant Shipping (Pollution) Act 2006 s 1(4).

6 Merchant Shipping (Pollution) Act 2006 s 1(4). As to the Secretary of State see PARA 58. An order may (1) make different provision for different circumstances; (2) modify or apply, with or without modification, provisions of the Merchant Shipping Act 1995 or any other enactment or instrument; (3) make incidental, supplemental, consequential or transitional provision; and (4) make provision extending to any relevant British

possession: Merchant Shipping (Pollution) Act 2006 s 1(5). As to the meaning of 'relevant British possession' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 342. See note 3.

7 Merchant Shipping (Pollution) Act 2006 s 1(3).

8 Merchant Shipping (Pollution) Act 2006 s 1(6). The reference is to any relevant British possessions, within the meaning of the Merchant Shipping Act 1995 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 17): see the Merchant Shipping (Pollution) Act 2006 s 1(6). See note 3.

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B. CONTRIBUTIONS TO THE FUND

462. Contributions by importers of oil and others.

Contributions are payable to the International Fund established by the Fund Convention¹ (the 'Fund') and to the Protocol of 2003 to the Fund Convention (the 'Supplementary Fund')² in respect of oil³ carried by sea to ports⁴ or terminal installations⁵ in the United Kingdom otherwise than on a voyage only within its national waters⁶, whether or not the oil is being imported, and even if contributions are payable in respect of carriage of the same oil on a previous voyage⁷.

Contributions are also payable to the Fund in respect of oil when first received in any installation in the United Kingdom after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country⁸; and to the Supplementary Fund in respect of oil when first received in any installation in the United Kingdom after having been carried by sea and discharged in a port or terminal installation in a country which is not a Supplementary Fund Protocol country⁹.

The person liable to pay contributions is:

- 883 (1) in the case of oil which is being imported into the United Kingdom, the importer¹⁰; and
- 884 (2) otherwise, the person by whom the oil is received¹¹.

A person¹² is not liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tonnes¹³.

The contributions payable by a person for any year:

- 885 (a) must be of such amount as may be determined, in the case of contributions to the Fund, by the Director of the Fund¹⁴ and notified to that person by the Fund, and, in the case of contributions to the Supplementary Fund, by the Director of the Supplementary Fund¹⁵;
- 886 (b) are payable in such instalments, becoming due at such times, as may be so notified to him;

and, if any amount due from him remains unpaid after the date on which it became due, it bears interest from then on at a rate determined from time to time by the Assembly of the Fund or the Assembly of the Supplementary Fund (as the case may be), until it is paid¹⁶.

The Secretary of State may by regulations impose on persons who are or may be liable to pay contributions under these provisions obligations to give security for payment to the Secretary of State, or the Fund¹⁷. Such regulations:

- 887 (i) may contain such supplemental or incidental provisions as appear to the Secretary of State expedient; and
- 888 (ii) may impose penalties for contravention¹⁸ of the regulations punishable by a fine¹⁹.

1 As to the meaning of 'Fund Convention' see PARA 459.

2 See PARA 459 note 1.

3 For these purposes, 'oil' means crude oil and fuel oil; and (1) 'crude oil' means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation and includes crude oils from which distillate fractions have been removed and crude oils to which distillate fractions have been added; (2) 'fuel oil' means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the 'American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D396-69)', or heavier: Merchant Shipping Act 1995 s 173(10).

4 As to the meaning of 'port' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 49.

5 For these purposes, 'terminal installation' means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site: Merchant Shipping Act 1995 s 173(10).

6 'National waters', in relation to the United Kingdom, means United Kingdom waters landward of the baselines for measuring the breadth of its territorial sea: Merchant Shipping Act 1995 s 313(2)(b).

7 Merchant Shipping Act 1995 s 173(1), (2) (s 173(1) amended by SI 2006/1265). As to the meaning of 'United Kingdom' see PARA 1 note 2.

8 For these purposes, 'Fund Convention country' means a country in respect of which the Fund Convention is in force: Merchant Shipping Act 1995 s 172(1)(d).

9 Merchant Shipping Act 1995 s 173(3) (amended by SI 2006/1265). For these purposes, 'Supplementary Fund Protocol country' means a country in respect of which the Supplementary Fund Protocol is in force: Merchant Shipping Act 1995 s 172(1)(g) (added by SI 2006/1265).

10 For these purposes, 'importer' means the person by whom or on whose behalf the oil in question is entered for customs or excise purposes on importation; and 'import' is to be construed accordingly: Merchant Shipping Act 1995 s 173(10).

11 Merchant Shipping Act 1995 s 173(4).

12 For these purposes: (1) all the members of a group of companies are to be treated as a single person; and (2) any two or more companies which have been amalgamated into a single company are to be treated as the same person as that single company: Merchant Shipping Act 1995 s 173(6). 'Company' means a body incorporated under the law of the United Kingdom or of any other country; and 'group', in relation to companies, means a holding company and its subsidiaries as defined by the Companies Act 2006 s 1159 (see **COMPANIES** vol 14 (2009) PARAS 1, 25), subject, in the case of a company incorporated outside the United Kingdom, to any necessary modifications of those definitions: Merchant Shipping Act 1995 s 173(10) (definition of 'group' amended by SI 2009/1941).

13 Merchant Shipping Act 1995 s 173(5).

14 Ie under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 art 12.

15 Ie under the Protocol of 2003 to the International Fund for Compensation for Oil Pollution Damage 1992 art 11.

16 Merchant Shipping Act 1995 s 173(7) (amended by SI 2006/1265).

17 Merchant Shipping Act 1995 s 173(8). As to the Secretary of State see PARA 58. At the date at which this volume states the law no such regulations had been made and none have effect as if so made. As to the making of regulations generally see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65; and as to the Secretary of State's power to appoint committees for the purpose of advising him when considering the making or alteration of any regulations see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41.

18 As to the meaning of 'contravention' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 note 3.

19 Merchant Shipping Act 1995 s 173(9). The reference is penalties punishable on summary conviction by a fine not exceeding level 5 on the standard scale, or such lower limit as may be specified in the regulations: see s 173(9). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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463. Power to obtain information.

For the purpose of transmitting to the Fund¹ or the Supplementary Fund² the names and addresses of the persons who³ are liable to make contributions to the Fund or Supplementary Fund for any year, and the quantity of oil⁴ in respect of which they are so liable, the Secretary of State may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice⁵.

Such a notice may specify the way in which, and the time within which, it is to be complied with⁶.

In proceedings by the Fund or the Supplementary Fund against any person to recover any amount due⁷, particulars contained in any list transmitted by the Secretary of State to either of the Funds are admissible, so far as those particulars are based on information obtained under these provisions, as evidence of the facts stated in the list; and, so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars are presumed to be accurate until the contrary is proved⁸.

If a person discloses any information which has been furnished to or obtained by him under, or in connection with the execution of, these provisions, then, unless the disclosure is made:

- 889 (1) with the consent of the person from whom the information was obtained; or
- 890 (2) in connection with the execution of these provisions; or
- 891 (3) for the purposes of any legal proceedings arising out of these provisions or of any report of such proceedings,

he is liable to a fine⁹.

A person who:

- 892 (a) refuses or wilfully neglects to comply with a notice under these provisions; or
- 893 (b) in furnishing any information in compliance with such a notice, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

is liable to a fine or imprisonment or both¹⁰.

1 As to the meaning of 'Fund' see PARA 462.

2 As to the meaning of 'Supplementary Fund' see PARA 462.

3 Ie under the Merchant Shipping Act 1995 s 173: see PARA 462.

4 As to the meaning of 'oil' see PARA 462 note 3.

5 Merchant Shipping Act 1995 s 174(1) (amended by SI 2006/1265). As to the Secretary of State see PARA 58.

6 Merchant Shipping Act 1995 s 174(3). A notice under s 174 may require a company to give such information as may be required to ascertain whether its liability is affected under s 173(6) (see PARA 462 note 12): s 174(2). As to the meaning of 'company' see PARA 462 note 12.

7 See note 3.

8 Merchant Shipping Act 1995 s 174(4) (amended by SI 2006/1265).

9 Merchant Shipping Act 1995 s 174(5). Such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 174(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the time limit for summary offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1100; as to offences by officers of bodies corporate see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1102; as to jurisdiction in relation to offences see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1103; as to jurisdiction over ships lying off the coast see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1104; as to jurisdiction in the case of offences on board ship see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1105; as to offences committed by British seamen see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1106; and as to proof etc of exemption see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1112.

10 Merchant Shipping Act 1995 s 174(6). Such a person is liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 12 months, or to both, or on summary conviction to a fine not exceeding level 4 on the standard scale in the case of an offence under head (a) in the text and not exceeding the statutory maximum in the case of an offence under head (b) in the text: see s 174(6). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

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C. COMPENSATION FOR PERSONS SUFFERING POLLUTION DAMAGE

464. Liability of the Fund.

The Fund¹ is liable for pollution damage² in the territory³ of the United Kingdom if the person suffering the damage⁴ has been unable to obtain full compensation⁵:

894 (1) because the discharge or escape⁶, or the relevant threat of contamination⁷, by reason of which the damage was caused:

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46. (a) resulted from an exceptional, inevitable and irresistible phenomenon; or

47. (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner⁸, with intent to do damage; or

48. (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible,

49. and because liability is accordingly wholly displaced⁹; or

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895 (2) because the owner or guarantor¹⁰ liable for the damage cannot meet his obligations¹¹ in full; or

896 (3) because the damage exceeds the liability¹² as duly¹³ limited¹⁴.

The Fund incurs no obligation under these provisions if:

897 (i) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection, or was caused by oil¹⁵ which has escaped or been discharged from a warship or other ship¹⁶ owned or operated by a state and used, at the time of the occurrence, only on government non-commercial service; or

898 (ii) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him¹⁷.

If the Fund proves that the pollution damage resulted wholly or partly:

899 (A) from anything done or omitted to be done with intent to cause damage by the person who suffered the damage; or

900 (B) from the negligence of that person,

the Fund may be exonerated wholly or partly from its obligations to pay compensation to that person¹⁸.

Where the liability¹⁹ in respect of the pollution damage is limited to any extent²⁰, the Fund is exonerated to the same extent²¹.

1 As to the meaning of 'Fund' see PARA 462.

2 For these purposes, 'pollution damage' means: (1) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship; (2) the cost of preventive measures; and (3) further damage caused by preventive measures, but does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of any loss of profits or the cost of any reasonable measures of reinstatement actually taken or to be taken: Merchant Shipping Act 1995 s 181(1).

Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage are treated as pollution damage for the purposes of s 175; and accordingly he is in the same position with respect to claims against the Fund under s 175 as if he had a claim in respect of liability under s 153 (see PARA 443): s 175(6).

For these purposes, 'preventive measures' means any reasonable measures taken by any person to prevent or minimise pollution damage, being measures taken after an incident has occurred or in the case of an incident consisting of a series of occurrences, after the first of those occurrences (s 181(1)); and 'incident' means any occurrence, or series of occurrences having the same origin, resulting in a discharge or escape of oil from a ship or in a relevant threat of contamination (s 181(1)). As to the meaning of 'oil' see note 15; as to the meaning of 'ship' see note 16; and as to the meaning of 'discharge or escape' see note 6.

3 For these purposes, references to the territory of any country are to be construed in accordance with the Merchant Shipping Act 1995 s 170(4) (see PARA 443 note 7) reading the reference to a Liability Convention country as a reference to a Fund Convention country: s 181(3). As to the meaning of 'Fund Convention country' see PARA 462 note 8.

4 For these purposes, 'damage' includes loss: Merchant Shipping Act 1995 s 181(1). The fund is not liable for secondary economic loss: *Algrete Shipping Co Inc v International Oil Pollution Compensation Fund 1971, The Sea Empress* [2003] EWCA Civ 65, [2003] 2 All ER (Comm) 1, [2003] 1 Lloyd's Rep 327.

5 Ie under the Merchant Shipping Act 1995 s 153: see PARA 443.

6 For these purposes, 'discharge or escape', in relation to pollution damage, means the discharge or escape of oil from the ship: Merchant Shipping Act 1995 s 181(1). References to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; and, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they are to be treated as one: s 181(2)(a), (b).

7 For these purposes, 'relevant threat of contamination' means a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship: Merchant Shipping Act 1995 s 181(1).

8 For these purposes, 'owner' means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a state which is operated by a person registered as the ship's operator, it means the person registered as its operator: Merchant Shipping Act 1995 s 181(1). As to the meaning of 'registered' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 254.

9 Ie by the Merchant Shipping Act 1995 s 155: see PARA 445.

10 For these purposes, 'guarantor' means any person providing insurance or other financial security to cover the owner's liability of the kind described in the Merchant Shipping Act 1995 s 163 (see PARA 453): s 181(1).

11 For these purposes, an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken: Merchant Shipping Act 1995 s 175(5).

12 Ie the liability under the Merchant Shipping Act 1995 s 153.

13 Ie as limited by the Merchant Shipping Act 1995 s 157: see PARA 447.

14 Merchant Shipping Act 1995 s 175(1). As to the meaning of 'United Kingdom' see PARA 1 note 2.

Section 175(1) applies with the substitution for the words 'United Kingdom' of the words 'a Fund Convention country' where: (1) the headquarters of the Fund are for the time being in the United Kingdom, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country; or (2) the incident has caused pollution damage in the territory of the United

Kingdom and of another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in the United Kingdom: Merchant Shipping Act 1995 s 175(2). 'Liability Convention' has the same meaning as in the Merchant Shipping Act 1995 Pt VI Ch III (ss 152-171) (see PARA 441): s 172(1)(a). As to limitation of the Fund's liability see PARA 465.

Where the incident has caused pollution damage in the territory of the United Kingdom and of another country in respect of which the Liability Convention is in force, references in the Merchant Shipping Act 1995 s 175 to the provisions of Pt VI Ch III (ss 152-171) include references to the corresponding provisions of the law of any country giving effect to the Liability Convention: Merchant Shipping Act 1995 s 175(3).

Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country and the Fund is liable for that pollution damage by virtue of the Merchant Shipping Act 1995 s 175(2)(a), references in s 175 to the provisions of Pt VI Ch III (ss 152-171) are treated as references to the corresponding provisions of the law of the country in which those proceedings were brought: s 175(4).

15 For these purposes, 'oil' means persistent hydrocarbon mineral oil: Merchant Shipping Act 1995 s 181(1).

16 For these purposes, 'ship' means any ship, within the meaning of Merchant Shipping Act 1995 Pt VI Ch III (ss 152-171) (see PARA 443 note 3) to which s 153 (see PARA 443) applies: s 181(1).

17 Merchant Shipping Act 1995 s 175(7).

18 Merchant Shipping Act 1995 s 175(8). Section 175(8) does not apply where the pollution damage consists of the costs of preventive measures or any damage caused by such measures: s 175(10).

19 See note 12.

20 Ie by the Merchant Shipping Act 1995 s 153(8).

21 Merchant Shipping Act 1995 s 175(9). Section 175(9) does not apply where the pollution damage consists of the costs of preventive measures or any damage caused by such measures: s 175(10).

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465. Limitation of the Fund's liability.

The liability of the Fund¹ is subject to the limits imposed² by the Fund Convention³.

A court giving judgment against the Fund in proceedings⁴ must notify the Fund⁵ and:

- 901 (1) no steps must be taken to enforce the judgment unless and until the court gives leave to enforce it;
- 902 (2) that leave must not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced⁶, or that it is to be reduced to a specified amount; and
- 903 (3) in the latter case the judgment is enforceable only for the reduced amount⁷.

Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned above must be steps to obtain payment in sterling and:

- 904 (a) for the purpose of converting such an amount from special drawing rights into sterling, one special drawing right is to be treated as equal to such a sum in sterling as the International Monetary Fund⁸ has fixed as being the equivalent of one special drawing right for the relevant day, namely the day on which the Assembly of the Fund decides the date for the first payment of compensation in respect of the incident⁹, or, if no sum has been so fixed for the relevant day, the last day before that day for which a sum has been so fixed; and
- 905 (b) a certificate given by or on behalf of the Treasury stating that a particular sum in sterling has been so fixed for the relevant day, or that no sum has been so fixed for the relevant day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day,

is conclusive evidence¹⁰ of those matters¹¹.

Any document purporting to be such a certificate as is mentioned above¹² must, in any legal proceedings, be received in evidence and, unless the contrary is proved, is deemed to be such a certificate¹³.

1 Ie under the Merchant Shipping Act 1995 s 175: see PARA 464. As to the meaning of 'Fund' see PARA 462.

2 Ie by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 art 4(4), (5), which imposes an overall limit on the liabilities of the Fund and the text of which is set out in the Merchant Shipping Act 1995 s 176(1), Sch 5 Pt I (amended by SI 2003/2559). In those provisions references to the Liability Convention are references to the Liability Convention within the meaning of the Merchant Shipping Act 1995 Pt VI Ch IV (ss 172-182) (see PARA 464 note 14): s 176(1). A certificate given by the Director of the Fund stating that the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 art 4(4)(c) is applicable to any claim under the Merchant Shipping Act 1995 s 175 is conclusive evidence for the purposes of Pt VI Ch IV (ss 172-182) that it is so applicable: s 176(2).

3 Merchant Shipping Act 1995 s 176(1). The Secretary of State may by order make such amendments of s 176 and Sch 5 Pt I as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the provisions set out in Sch 5: s 176(5). As to the Secretary of State see PARA 58. As to the order made under s 176(5) see the Merchant Shipping (Oil Pollution Compensation Limits) Order 2003, SI 2003/2559. As to the making of orders see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 65.

4 See note 1.

5 Ie for the purpose of giving effect to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 art 4(4), (5).

6 Ie under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 art 4(4), (5).

7 Merchant Shipping Act 1995 s 176(3).

8 As to the International Monetary Fund see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 533; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1391.

9 As to the meaning of 'incident' see PARA 464 note 2.

10 Ie for the purposes of the Merchant Shipping Act 1995 Pt VI Ch IV (ss 172-182).

11 Merchant Shipping Act 1995 s 176(4). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

12 Ie in the Merchant Shipping Act 1995 s 176(2) or (4)(b).

13 Merchant Shipping Act 1995 s 176(6).

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466. Liability of the Supplementary Fund.

The Supplementary Fund¹ is liable for pollution damage² in the territory³ of the United Kingdom in accordance with the Supplementary Fund Protocol⁴ in the circumstances mentioned in that Protocol⁵.

Nothing in these provisions⁶ applies to pollution damage resulting from an incident⁷ if (1) in the case of a single occurrence, it took place before the day on which the Supplementary Fund Protocol enters into force as respects the United Kingdom; or (2) in the case of a series of occurrences having the same origin, the first of those occurrences took place before that day⁸.

1 As to the meaning of 'Supplementary Fund' see PARA 462.

2 As to the meaning of 'pollution damage' see PARA 464 note 2.

3 For these purposes, references to the territory of any country are to be construed in accordance with the Merchant Shipping Act 1995 s 170(4) (see PARA 443 note 7) reading the reference to a Liability Convention country as a reference to a Supplementary Fund Protocol country: s 181(3) (amended by SI 2006/1265). As to the meaning of 'Supplementary Fund Protocol country' see PARA 462 note 9.

4 As to the meaning of 'Supplementary Fund Protocol' see PARA 459.

5 Merchant Shipping Act 1995 s 176A(1) (s 176A added by SI 2006/1265). More specifically the reference is to the Supplementary Fund Protocol art 4 para 1 (cases where full compensation cannot be obtained because of the limit imposed by the Fund Convention art 4 para 4): see the Merchant Shipping Act 1995 s 176A(1) (as so added). As to the text of the Supplementary Fund Protocol art 4 para 1 see Merchant Shipping Act 1995 Sch 5ZA (added by SI 2006/1265). As to the meaning of 'United Kingdom' see PARA 1 note 2. As to the meaning of 'Fund Convention' see PARA 459.

The Merchant Shipping Act 1995 s 176A(1) applies with the substitution for the words 'the United Kingdom' of the words 'a Supplementary Fund Protocol country' where (1) the headquarters of the Supplementary Fund is for the time being in the United Kingdom, and proceedings under the Liability Convention or the Fund Convention for compensation for the pollution damage have been brought in a country which is not a Supplementary Fund Protocol country; or (2) the incident has caused pollution damage in the territory of the United Kingdom and of another Supplementary Fund Protocol country, and proceedings under the Liability Convention or the Fund Convention for compensation for the pollution damage have been brought in a country which is not a Supplementary Fund Protocol country or in the United Kingdom: Merchant Shipping Act 1995 s 176A(2) (as so added). As to the meaning of 'Liability Convention' see PARA 441. As to the meaning of 'Fund Convention' see PARA 459. As to the limitation of the Supplementary Fund's liability see PARA 467.

6 Ie the Merchant Shipping Act 1995 s 176A.

7 As to the meaning of 'incident' see PARA 464 note 2.

8 Merchant Shipping Act 1995 s 176A(3) (as added: see note 5).

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467. Limitation of the Supplementary Fund's liability.

The liability of the Supplementary Fund¹ is subject to (1) certain provisions² of the Supplementary Fund Protocol (which impose an overall limit on the liabilities of the Supplementary Fund); and (2) certain other provisions³ of the Supplementary Fund Protocol (which prevent the Supplementary Fund from paying compensation temporarily and permanently where obligations to communicate information to the Director⁴ have not been met)⁵.

For the purpose of giving effect to the provisions of the Supplementary Fund Protocol referred to in head (1) above a court giving judgment⁶ against the Supplementary Fund must notify the Supplementary Fund, and:

- 906 (a) no steps must be taken to enforce the judgment unless and until the court gives leave to enforce it;
- 907 (b) that leave must not be given unless and until the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under those provisions, or that it is to be reduced to a specified amount; and
- 908 (c) in the latter case the judgment is enforceable only for the reduced amount⁷.

Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned above⁸ must be steps to obtain payment in sterling; and:

- 909 (i) for the purpose of converting such an amount from special drawing rights into sterling, one special drawing right is to be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for (A) the relevant date⁹; or (B) if no sum has been so fixed for the relevant date, the last day before that date for which a sum has been so fixed; and
- 910 (ii) a certificate given by or on behalf of the Treasury stating (A) that a particular sum in sterling has been so fixed for the relevant date; or (B) that no sum has been so fixed for the relevant date and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant date, is conclusive evidence¹⁰ of those matters¹¹.

Any document purporting to be such a certificate as is mentioned in head (ii) above must, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate¹².

¹ Ie under Merchant Shipping Act 1995 s 176A: see PARA 466. As to the meaning of 'Supplementary Fund' see PARA 462.

² Ie the Supplementary Fund Protocol art 4 paras 2, 3. As to the meaning of 'Supplementary Fund Protocol' see PARA 459. As to the text of art 4 paras 2, 3; art 13 para 1; and art 15 paras 1, 2, 3 see the Merchant Shipping Act 1995 Sch 5ZA (added by SI 2006/1265).

- 3 le the Supplementary Fund Protocol art 15 paras 2, 3. See note 2.
- 4 le under the Supplementary Fund Protocol art 13 para 1 and art 15 para 1. See note 2.
- 5 Merchant Shipping Act 1995 s 176B(1) (s 176B added by SI 2006/1265).
- 6 le in proceedings under the Merchant Shipping Act 1995 s 176A: see PARA 466.
- 7 Merchant Shipping Act 1995 s 176B(2) (as added: see note 5).
- 8 le in the Merchant Shipping Act 1995 s 176A(2).
- 9 le the date referred to in the Supplementary Fund Protocol art 4 para 2(b).
- 10 le for the purposes of the Merchant Shipping Act 1995 Pt VI Ch IV (ss 172-182).
- 11 Merchant Shipping Act 1995 s 176B(3) (as added: see note 5). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.
- 12 Merchant Shipping Act 1995 s 176B(3) (as added: see note 5).

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D. SUPPLEMENTARY PROVISIONS

468. Jurisdiction; effect of judgments.

Where, in accordance with rules of court made for these purposes, the Fund¹ has been given notice of proceedings brought against an owner² or guarantor³ in respect of liability for oil pollution⁴, (1) the notice is deemed to have been given to the Supplementary Fund⁵ as well; and (2) any judgment given in the proceedings, after it has become final and enforceable, becomes binding upon the Fund and the Supplementary Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund or the Supplementary Fund, even if it has not intervened in the proceedings⁶.

1 As to the meaning of 'Fund' see PARA 462.

2 As to the meaning of 'owner' see PARA 464 note 8.

3 As to the meaning of 'guarantor' see PARA 464 note 10.

4 Ie liability under the Merchant Shipping Act 1995 s 153: see PARA 443.

5 As to the meaning of 'Supplementary Fund' see PARA 462.

6 Merchant Shipping Act 1995 s 177(2) (amended by SI 2006/1265). Where a person incurs a liability under the law of a Fund Convention country corresponding to the Merchant Shipping Act 1995 Pt VI Ch III (ss 152-171) (see PARA 441 et seq) for damage which is partly in the territory of the United Kingdom, s 177(2) applies, for the purpose of proceedings under Pt VI Ch IV (ss 172-182) (see PARA 459 et seq), with any necessary modifications to a judgment in proceedings under that law of that country: s 177(3). As to the meaning of 'damage' see PARA 464 note 4; as to the meaning of 'territory' see PARA 464 note 3; and as to the meaning of 'Fund Convention country' see PARA 462 note 8. As to the meaning of 'United Kingdom' see PARA 1 note 2.

Subject to s 177(5), (6) (see below), the Foreign Judgments (Reciprocal Enforcement) Act 1933 Pt I (ss 1-7) (see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 171 et seq) applies, whether or not it would so apply apart from the Merchant Shipping Act 1995 s 177(4), to (1) any judgment given by a court in a Fund Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to s 175 (see PARA 464); (2) any judgment given by a court in a Supplementary Fund Protocol country to enforce a claim in respect of a liability incurred under any provision corresponding to s 176A (see PARA 466), and in its application to such a judgment the Foreign Judgments (Reciprocal Enforcement) Act 1933 Pt I has effect with the omission of s 4(2), (3) (see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARAS 177, 178); Merchant Shipping Act 1995 s 177(4) (s 177(4), (5) substituted by SI 2006/1265). As to the meaning of 'Supplementary Fund Protocol country' see PARA 462 note 9.

No steps may, however, be taken to enforce such a judgment unless and until (a) in the case of a judgment within head (1) above, the Fund notifies the court either that the amount of the claim is not to be reduced under the Fund Convention art 4 paras 4, 5 (as set out in the Merchant Shipping Act 1995 Sch 5 Pt 1 (amended by SI 2003/2559)) or that it is to be reduced to a specified amount; or (b) in the case of a judgment within head (2) above, the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under the Supplementary Fund Protocol art 4 paras 2, 3 (as set out in the Merchant Shipping Act 1995 Sch 5ZA (added by SI 2006/1265)) or that it is to be reduced to a specified amount: Merchant Shipping Act 1995 s 177(5) (as so substituted). Where the court is so notified that a claim is to be reduced to a specified amount, the judgment may be enforceable only for the reduced amount: s 177(6) (added by SI 2006/1265).

The Administration of Justice Act 1956 Sch 1 para 1(1)(d) (Admiralty jurisdiction in claims for damage done by ships) must be construed as extending to any claim in respect of a liability falling on the Fund or the Supplementary Fund under the Merchant Shipping Act 1995 Pt VI Ch IV (ss 172-182): see s 177(1) (amended by SI 2006/1265).

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469. Extinguishment of claims.

No action to enforce a claim against the Fund¹ may be entertained by a court in the United Kingdom unless:

- 911 (1) the action is commenced; or
- 912 (2) a third party notice² of an action to enforce a claim against the owner³ or his guarantor⁴ in respect of the same damage⁵ is given to the Fund,

not later than three years after the damage occurred⁶.

No action to enforce a claim against the Fund⁷ may be entertained by a court in the United Kingdom unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape⁸, or, as the case may be, in the relevant threat of contamination⁹, by reason of which the claim against the Fund arose¹⁰.

The above provisions¹¹ apply in relation to claims against the Supplementary Fund¹² as they apply in relation to claims against the Fund, with the substitution for the reference to the Fund in head (2) above of a reference to the Supplementary Fund¹³.

For the purposes of these provisions¹⁴ (a) a person who commences an action to enforce a claim against the Fund in relation to any damage is deemed also to have commenced an action to enforce any claim he may have against the Supplementary Fund in relation to that damage; and (b) a person who gives a third party notice to the Fund in relation to any damage as mentioned in head (2) above is deemed also to have given a notice to the Supplementary Fund in relation to that damage¹⁵.

1 Ie under the Merchant Shipping Act 1995 Pt VI Ch IV (ss 172-182): see PARA 459 et seq. As to the meaning of 'Fund' see PARA 462.

2 For these purposes, 'third party notice' means a notice of the kind described in the Merchant Shipping Act 1995 s 177(2), (3) (see PARA 468): s 178(1).

3 As to the meaning of 'owner' see PARA 464 note 8.

4 As to the meaning of 'guarantor' see PARA 464 note 10.

5 As to the meaning of 'damage' see PARA 464 note 4.

6 Merchant Shipping Act 1995 s 178(1) (amended by the Merchant Shipping (Pollution) Act 2006 s 3).

7 See note 1.

8 As to the meaning of 'discharge or escape' see PARA 464 note 6.

9 As to the meaning of 'relevant threat of contamination' see PARA 464 note 7.

10 Merchant Shipping Act 1995 s 178(2).

11 Ie the Merchant Shipping Act 1995 s 178(1), (2).

12 As to the meaning of 'Supplementary Fund' see PARA 462.

- 13 Merchant Shipping Act 1995 s 178(3) (s 178(3), (4) added by SI 2006/1265).
- 14 ie the Merchant Shipping Act 1995 s 178.
- 15 Merchant Shipping Act 1995 s 178(4) (as added: see note 13).

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470. Subrogation.

In respect of any sum paid by the Fund¹ as compensation for pollution damage², the Fund acquires by subrogation any rights in respect of the damage³ which the recipient has, or but for the payment would have, against any other person⁴.

In respect of any sum paid by the Supplementary Fund⁵ as compensation for pollution damage the Supplementary Fund acquires by subrogation any rights in respect of the damage which the recipient has, or but for the payment would have, against any other person⁶.

In respect of any sum paid by a public authority in the United Kingdom as compensation for pollution damage, that authority acquires by subrogation any rights which the recipient has⁷ against the Fund or the Supplementary Fund⁸.

1 As to the meaning of 'Fund' see PARA 462

2 As to the meaning of 'pollution damage' see PARA 464 note 2.

3 As to the meaning of 'damage' see PARA 464 note 4.

4 Merchant Shipping Act 1995 s 179(1).

5 As to the meaning of 'Supplementary Fund' see PARA 462.

6 Merchant Shipping Act 1995 s 179(1A) (added by SI 2006/1265)

7 Ie under the Merchant Shipping Act 1995 Pt VI Ch IV (ss 172-182): see PARA 459 et seq.

8 Merchant Shipping Act 1995 s 179(2) (amended by SI 2006/1265). As to the meaning of 'United Kingdom' see PARA 1 note 2.

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471. Proceedings involving the Fund and the Supplementary Fund.

Any proceedings by or against the Fund¹ may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund's representative².

Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy must, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate³.

The above provisions⁴ apply in relation to the Supplementary Fund⁵ as they apply in relation to the Fund, with the substitution for references to the Director, any organ or an official of the Fund of references to the Director, any organ or an official of the Supplementary Fund⁶.

1 As to the meaning of 'Fund' see PARA 462.

2 Merchant Shipping Act 1995 s 180(1).

3 Merchant Shipping Act 1995 s 180(2).

4 Ie the Merchant Shipping Act 1995 s 180(1), (2).

5 As to the meaning of 'Supplementary Fund' see PARA 462.

6 Merchant Shipping Act 1995 s 180(3) (added by SI 2006/1265).

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(viii) Carriage of Hazardous and Noxious Substances

A. IN GENERAL

472. Power to give effect to the Convention.

Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to:

- 913 (1) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996¹ (the 'Convention') on or after its ratification by the United Kingdom; or
- 914 (2) any revision of the Convention which appears to Her Majesty in Council to have been agreed to by the government of the United Kingdom².

The power so conferred to make provision for the purpose of giving effect to the Convention or an agreement revising the Convention includes power to provide for the provision to come into force even though the Convention or the agreement has not come into force³.

Such an Order may include provision⁴:

- 915 (a) requiring contributions to be paid in accordance with the Convention to the International Hazardous and Noxious Substances Fund⁵ established under the Convention;
- 916 (b) for applying for the above purpose⁶ any enactment or instrument relating to the pollution of the sea or other waters, including provisions creating offences, with such modifications, if any, as may be prescribed by the Order;
- 917 (c) making such modifications of any enactment or instrument⁷ as appear to Her Majesty to be appropriate⁸;
- 918 (d) with respect to the application of the Order to the Crown;
- 919 (e) for detaining any ship⁹ in respect of which a contravention¹⁰ of a provision made by or under the Order is suspected to have occurred and, in relation to such a ship, for applying the provisions relating to enforcing the detention of ships¹¹ with such modifications, if any, as are prescribed by the Order;
- 920 (f) for a certificate issued by or on behalf of the Secretary of State and stating that at a particular time a particular substance was, or was not, a hazardous or noxious substance for the purposes of the Convention to be conclusive evidence of that matter¹².

Such an Order may:

- 921 (i) make different provision for different circumstances;
- 922 (ii) make provision for references in the Order to any specified document to operate as references to that document as revised or reissued from time to time;
- 923 (iii) provide for the delegation of functions exercisable by virtue of the Order;

- 924 (iv) include such incidental, supplemental and transitional provisions as appear to Her Majesty to be expedient for the purposes of the Order; and
- 925 (v) authorise the making of regulations for the purposes of these provisions, except the purposes of heads (a), (b) and (c) above¹³.

A draft of an Order in Council proposed to be made by virtue of the above provisions must not be submitted to Her Majesty in Council unless it has been approved by a resolution of each House of Parliament¹⁴.

1 Ie the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (London, 3 May 1996; Misc 5 (1997); Cm 3580). The text of the Convention, excluding the annexes, is set out in the Merchant Shipping Act 1995 s 182A(2), Sch 5A (see PARA 474 et seq); s 182A(2) (ss 182A, 182B added by the Merchant Shipping and Maritime Security Act 1997 s 14(1)). The annexes to the Convention constitute an integral part of the Convention: Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 2.

In interpreting the definition of 'hazardous and noxious substances' in art 1(5) (see PARA 476), any reference in art 1(5) to a particular convention or code as amended is to be taken to be a reference to that convention or code as amended from time to time, whether before or after the commencement of the Merchant Shipping Act 1995 Pt VI Ch V (ss 182A-182C): s 182A(3) (as so added).

2 Merchant Shipping Act 1995 ss 182A(1), 182B(1) (as added: see note 1).

3 Merchant Shipping Act 1995 s 182B(2) (as added: see note 1).

4 Ie without prejudice to the generality of the Merchant Shipping Act 1995 s 182B(1).

5 As to the International Hazardous and Noxious Substances Fund see PARA 487.

6 Ie the purpose mentioned in the Merchant Shipping Act 1995 s 182B(1).

7 Ie including, where the Order is made under the Merchant Shipping Act 1995 s 182B(1)(b) (see head (2) in the text), modifications of Sch 5A and s 182C (see PARA 473).

8 Ie for the purpose specified in the Merchant Shipping Act 1995 s 182B(1).

9 As to the meaning of 'ship' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

10 As to the meaning of 'contravention' see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 50 note 3.

11 Ie the Merchant Shipping Act 1995 s 284: see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1253.

12 Merchant Shipping Act 1995 s 182B(3) (as added: see note 1).

13 Merchant Shipping Act 1995 s 182B(4) (as added: see note 1).

14 Merchant Shipping Act 1995 s 182B(5) (as added: see note 1).

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473. Secretary of State's power to make orders.

The Secretary of State may by order make such amendments to the statutory provisions containing the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996¹ and any Order in Council made by Her Majesty² as appear to him to be appropriate for the purpose of giving effect to any amendment of a relevant limit³ which is adopted in accordance with that Convention⁴.

1 Ie the Merchant Shipping Act 1995 s 182A(2), Sch 5A: see PARA 474 et seq.

2 Ie the Merchant Shipping Act 1995 s 182B(1): see PARA 472.

3 For these purposes, 'relevant limit' means any of the limits for the time being specified in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(1) (see PARA 482) and art 14(5) (see PARA 488): Merchant Shipping Act 1995 s 182C(2) (s 182C added by the Merchant Shipping and Maritime Security Act 1997 s 14(1)).

4 Merchant Shipping Act 1995 s 182C(1) (as added: see note 3). As to the Secretary of State see PARA 58.

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B. APPLICATION OF THE CONVENTION

474. Damage and preventive measures.

The Convention¹ applies exclusively:

- 926 (1) to any damage² caused in the territory, including the territorial sea³, of a state party⁴;
- 927 (2) to damage by contamination of the environment caused in the exclusive economic zone of a state party, established in accordance with international law, or, if a state party has not established such a zone, in an area beyond and adjacent to the territorial sea of that state determined by that state in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- 928 (3) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any state, if this damage has been caused by a substance carried on board a ship⁵ registered in a state party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a state party; and
- 929 (4) to preventive measures⁶, wherever taken⁷.

1 As to the meaning of 'Convention' see PARA 472.

2 As to the meaning of 'damage' see PARA 475.

3 As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

4 As to signature etc of the Convention see PARA 515.

5 For these purposes, 'ship' means any sea-going vessel and seaborne craft, of any type whatsoever: Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(1).

6 For these purposes, 'preventive measures' means any reasonable measures taken by any person after an incident has occurred to prevent or minimise damage: Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(7). 'Incident' means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage (art 1(8)); and 'person' means any individual or partnership or any public or private body, whether corporate or not, including a state or any of its constituent sub-divisions (art 1(2)).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 3.

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475. Meaning of 'damage'.

'Damage' means¹:

- 930 (1) loss of life or personal injury on board or outside the ship² carrying the hazardous and noxious substances³ caused by those substances⁴;
- 931 (2) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;
- 932 (3) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment must be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
- 933 (4) the costs of preventive measures⁵ and further loss or damage caused by preventive measures⁶.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage is deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a specified⁷ type⁸.

1 Ie for the purposes of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996: see PARA 474, 476 et seq.

2 As to the meaning of 'ship' see PARA 474 note 5.

3 As to the meaning of 'hazardous and noxious substances' see PARA 476.

4 For these purposes, 'caused by those substances' means caused by the hazardous or noxious nature of the substances: Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(6).

5 As to the meaning of 'preventive measures' see PARA 474 note 6.

6 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(6).

7 Ie a type referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 4(3): see PARA 477.

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(6).

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476. Meaning of 'hazardous and noxious substances'.

'Hazardous and noxious substances' ('HNS') means¹:

934 (1) any substances, materials and articles carried on board a ship² as cargo, referred to in heads (1)(a) to (1)(g) below:

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- 50. (a) oils carried in bulk³;
- 51. (b) noxious liquid substances carried in bulk⁴;
- 52. (c) dangerous liquid substances carried in bulk⁵ and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed⁶;
- 53. (d) dangerous, hazardous and harmful substances, materials and articles in packaged form⁷;
- 54. (e) liquefied gases⁸ and the products for which preliminary suitable conditions for the carriage have been prescribed⁹;
- 55. (f) liquid substances carried in bulk with a flashpoint not exceeding 60°C, measured by a closed cup test;
- 56. (g) solid bulk materials¹⁰; and

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935 (2) residues from the previous carriage in bulk of substances referred to in heads (1)(a) to (1)(c) and (1)(e) to (1)(g) above¹¹.

1 Ie for the purposes of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996: see PARAS 474, 475, 477 et seq.

2 As to the meaning of 'ship' see PARA 474 note 5.

3 Ie listed in the International Convention for the Prevention of Pollution from Ships 1973 (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748) Annex I App I (modified by the Protocol (London, 1 June 1978 to 31 May 1979; Misc 27 (1978); Cmnd 7347) relating thereto).

4 Ie referred to in the International Convention for the Prevention of Pollution from Ships 1973 Annex II App II (modified by the 1978 Protocol relating thereto), and those substances and mixtures provisionally categorised as falling in pollution category A, B, C or D in accordance with Annex II reg 3(4).

5 Ie listed in the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk 1983 Ch 17.

6 Ie by the Administration and port administrations involved in accordance with the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk 1983 para 1.1.3.

7 Ie covered by the International Maritime Dangerous Goods Code.

8 Ie as listed in the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk 1983 Ch 19.

9 Ie by the Administration and port administrations involved in accordance with the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk 1983 para 1.1.6.

10 le possessing chemical hazards covered by the Code of Safe Practice for Solid Bulk Cargoes App B, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form.

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(5).

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477. Claims.

The Convention¹ applies to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage² arising from the carriage of hazardous and noxious substances³ by sea⁴.

The Convention does not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes⁵; nor does the Convention apply to pollution damage⁶ or to damage caused by a radioactive material⁷.

The provisions of the Convention do not apply⁸ to warships, naval auxiliary or other ships owned or operated by a state and used, for the time being, only on government non-commercial service⁹; but a state party¹⁰ may decide to apply the Convention to its warships or other vessels¹¹, in which case it must notify the Secretary General¹² thereof specifying the terms and conditions of such application¹³.

With respect to ships owned by a state party and used for commercial purposes, each state is subject to suit in the specified jurisdictions¹⁴ and must waive all defences based on its status as a sovereign state¹⁵.

1 As to the meaning of 'Convention' see PARA 472.

2 As to the meaning of 'damage' see PARA 475.

3 As to the meaning of 'hazardous and noxious substances' see PARA 476.

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 4(1). For these purposes, 'carriage by sea' means the period from the time when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge; if no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail: art 1(9). As to the meaning of 'ship' see PARA 474 note 5.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 4(2).

6 I.e. as defined in the International Convention on Civil Liability for Oil Pollution Damage 1969 (Brussels, 29 November 1969 to 31 December 1970; TS 106 (1975); Cmnd 6183), whether or not compensation is payable in respect of it under that Convention.

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 4(3). For these purposes, 'radioactive material' means a material of class 7 either in the International Maritime Dangerous Goods Code or in the Code of Safe Practice for Solid Bulk Cargoes App B: Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 4(3)(b).

8 I.e. except as provided in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 4(5): see the text and notes 10-13.

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 4(4).

10 As to signature etc of the Convention see PARA 515.

11 le other vessels described in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 4(4).

12 For these purposes, 'Secretary General' means the Secretary General of the Organisation (Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(17)); and 'Organisation' means the International Maritime Organisation (art 1(16)). As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13.

13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 4(5).

14 le the jurisdictions set forth in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38: see PARA 508.

15 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 4(6).

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478. Exclusions.

A state may, at the time of ratification, acceptance, approval of, or accession to, the Convention¹, or any time thereafter, declare that the Convention does not apply to ships²:

- 936 (1) which do not exceed 200 gross tonnage; and
- 937 (2) which carry hazardous and noxious substances³ only in packaged form; and
- 938 (3) while they are engaged on voyages between ports or facilities of that state⁴.

Where two neighbouring states agree that the Convention does not apply also to ships which are covered by heads (1) and (2) above while engaged on voyages between ports or facilities of those states, the states concerned may declare that the exclusion from the application of the Convention declared under the above provisions⁵ covers also ships referred to⁶ in this provision⁷.

Any state which has made the above declaration⁸ may withdraw such declaration at any time⁹.

A declaration so made and the withdrawal of the declaration must be deposited with the Secretary General¹⁰ who must, after the entry into force of the Convention, communicate it to the Director¹¹.

Where a state has so made a declaration and has not withdrawn it, hazardous and noxious substances carried on board such ships are not considered¹² to be contributing cargo¹³.

The HNS Fund¹⁴ is not liable to pay compensation for damage¹⁵ caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under the above provisions to the specified¹⁶ extent¹⁷.

1 As to the meaning of 'Convention' see PARA 472. As to signature etc of the Convention see PARA 515.

2 As to the meaning of 'ship' see PARA 474 note 5.

3 As to the meaning of 'hazardous and noxious substances' see PARA 476.

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 5(1).

5 Ie declared under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 5(1).

6 Ie referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 5(2).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 5(2).

8 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 5(1) or (2).

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 5(3).

10 As to the meaning of 'Secretary General' see PARA 477 note 12.

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 5(4). For these purposes, 'Director' means the Director of the HNS Fund: art 1(15). As to the meaning of 'HNS Fund' see note 14.

12 Ie for the purposes of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18 (see PARA 493), art 20 (see PARA 495), art 21(5) (see PARA 496) and art 43 (see PARA 513).

13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 5(5). For these purposes, 'contributing cargo' means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a state party and discharged in that state; cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination is to be considered as contributing cargo only in respect of receipt at the final destination: art 1(10). 'Terminal' means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated offshore and linked by pipe-line or otherwise to such site: art 1(14).

14 For these purposes, 'HNS Fund' means the International Hazardous and Noxious Substances Fund established under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 13 (see PARA 487): art 1(11).

15 As to the meaning of 'damage' see PARA 475.

16 Ie to the extent that (1) the damage as defined in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(6)(a), (b) or (c) (see PARA 475 heads (1)-(3)) was caused in (a) the territory, including the territorial sea, of the state which has made the declaration, or in the case of neighbouring states which have made a declaration under art 5(2) (see the text and notes 5-7), of either of them; or (b) the exclusive economic zone, or area mentioned in art 3(b) (see PARA 474 head (2)), of the state or states referred to in head (a) above; (2) the damage includes measures taken to prevent or minimise such damage.

17 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 5(6).

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C. DUTIES OF STATES PARTIES

479. Fulfilment of obligations.

Each state party¹ must ensure that any obligation arising under the Convention² is fulfilled and must take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation³.

1 As to signature etc of the Convention see PARA 515.

2 As to the meaning of 'Convention' see PARA 472.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 6.

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D. LIABILITY

(A) OWNER'S LIABILITY

480. Liability of the owner.

The owner¹ at the time of an incident² is liable³ for damage⁴ caused by any hazardous and noxious substances⁵ in connection with their carriage by sea⁶ on board the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability attaches to the owner at the time of the first of such occurrences⁷.

No liability attaches to the owner, however, if the owner proves that:

- 939 (1) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- 940 (2) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- 941 (3) the damage was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
- 942 (4) the failure of the shipper or any other person⁸ to furnish information concerning the hazardous and noxious nature of the substances shipped either has caused the damage, wholly or partly, or has led the owner not to obtain insurance⁹, provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped¹⁰.

If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person¹¹.

No claim for compensation for damage may be made against the owner otherwise than in accordance with the Convention¹².

No claim for compensation for damage under the Convention or otherwise may be made¹³ against:

- 943 (a) the servants or agents of the owner or the members of the crew;
- 944 (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- 945 (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- 946 (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- 947 (e) any person taking preventive measures¹⁴; and
- 948 (f) the servants or agents of persons mentioned in heads (c), (d) and (e) above,

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result¹⁵.

Nothing in the Convention prejudices any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver¹⁶ of the substance causing the damage, or the persons indicated in heads (a) to (f) above¹⁷.

1 For these purposes, 'owner' means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship; but, in the case of a ship owned by a state and operated by a company which in that state is registered as the ship's operator, 'owner' means such company: Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(3). As to the meaning of 'ship' see PARA 474 note 5.

2 As to the meaning of 'incident' see PARA 474 note 6.

3 Ie except as provided in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7(2), (3): see the text and notes 8-11.

4 As to the meaning of 'damage' see PARA 475.

5 As to the meaning of 'hazardous and noxious substances' see PARA 476.

6 As to the meaning of 'carriage by sea' see PARA 477 note 4.

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7(1).

8 As to the meaning of 'person' see PARA 474 note 6.

9 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12: see PARAS 485, 486.

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7(2).

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7(3).

12 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7(4). As to the meaning of 'Convention' see PARA 472.

13 Ie subject to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7(6): see the text and notes 16, 17.

14 As to the meaning of 'preventive measures' see PARA 474 note 6.

15 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7(5).

16 For these purposes, 'receiver' means either: (1) the person who physically receives contributing cargo discharged in the ports and terminals of a state party, provided that, if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any state party, the principal is deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or (2) the person in the state party who in accordance with the national law of that state party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a state party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under head (1) above: Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(4). As to the meaning of 'contributing cargo' see PARA 478 note 13; and as to the meaning of 'HNS Fund' see PARA 487.

17 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7(6).

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(B) INCIDENTS INVOLVING TWO OR MORE SHIPS

481. In general.

Whenever damage¹ has resulted from an incident² involving two or more ships³ each of which is carrying hazardous and noxious substances⁴, each owner⁵, unless exonerated from liability⁶, is liable for the damage; and the owners are jointly and severally liable for all such damage which is not reasonably separable⁷.

Owners are, however, entitled to the limits of liability applicable⁸ to each of them⁹.

Nothing in the above provisions prejudices any right of recourse of an owner against any other owner¹⁰.

1 As to the meaning of 'damage' see PARA 475.

2 As to the meaning of 'incident' see PARA 474 note 6.

3 As to the meaning of 'ship' see PARA 474 note 5.

4 As to the meaning of 'hazardous and noxious substances' see PARA 476.

5 As to the meaning of 'owner' see PARA 480 note 1.

6 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7: see PARA 480.

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 8(1).

8 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9: see PARA 482.

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 8(2).

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 8(3).

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(C) LIMITATION OF LIABILITY

482. Limitation of liability.

The owner¹ of a ship² is entitled to limit liability under the Convention³ in respect of any one incident⁴ to an aggregate amount calculated as follows:

- 949 (1) 10 million units of account⁵ for a ship not exceeding 2,000 units of tonnage⁶;
and
950 (2) for a ship with a tonnage in excess thereof, the following amount in addition
to that mentioned in head (1) above:
- 115 57. (a) for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500
units of account;
58. (b) for each unit of tonnage in excess of 50,000 units of tonnage, 360
units of account;
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provided that this aggregate amount does not in any event exceed 100 million units of account⁷.

The owner is not entitled to limit liability under the Convention if it is proved that the damage⁸ resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result⁹.

The owner must, for the purpose of benefiting from the limitation provided for under the above provisions, constitute a fund for the total sum representing the limit of liability so established with the court or other competent authority of any one of the states parties¹⁰ in which action is brought¹¹, or, if no action is brought, with any court or other competent authority in any one of the states parties in which an action can be so brought¹². The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the state party where the fund is constituted, and considered to be adequate by the court or other competent authority¹³.

The fund must be distributed¹⁴ among the claimants in proportion to the amounts of their established claims¹⁵.

If, before the fund is distributed, the owner or any of the servants or agents of the owner or any person¹⁶ providing to the owner insurance or other financial security has, as a result of the incident in question, paid compensation for damage, such person acquires, up to the amount that person has paid, by subrogation the rights which the person so compensated would have enjoyed under the Convention¹⁷. Such right of subrogation may also be exercised by a person other than those mentioned above¹⁸ in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law¹⁹.

Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed²⁰ had the compensation been paid before the fund was

distributed, the court or other competent authority of the state where the fund has been constituted may order that a sufficient sum be provisionally set aside to enable such person at such later date to enforce the claim against the fund²¹.

Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise damage rank equally with other claims against the fund²².

The insurer or other person providing financial security is entitled to constitute a fund in accordance with these provisions on the same conditions and having the same effect as if it were constituted by the owner²³. Such a fund may be constituted even if the owner is not entitled²⁴ to limitation of liability, but its constitution does not in that case prejudice the rights of any claimant against the owner²⁵.

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established²⁶ under the above provisions²⁷.

1 As to the meaning of 'owner' see PARA 480 note 1.

2 As to the meaning of 'ship' see PARA 474 note 5.

3 As to the meaning of 'Convention' see PARA 472.

4 As to the meaning of 'incident' see PARA 474 note 6.

5 For these purposes, 'unit of account' means the Special Drawing Right as defined by the International Monetary Fund: Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(12). As to the International Monetary Fund see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 533; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1391.

6 For these purposes, the ship's tonnage is the gross tonnage calculated in accordance with the tonnage measurement regulations contained in the International Convention on Tonnage Measurement of Ships 1969 (London, 23 June to 23 December 1969; TS 50 (1982); Cmnd 8716) Annex I: Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(10).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(1). As to the conversion of the amounts into national currency see PARA 483.

8 As to the meaning of 'damage' see PARA 475.

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(2).

10 As to signature etc of the Convention see PARA 515.

11 *Ie* under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38: see PARA 508.

12 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(3).

13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(3).

14 *Ie* subject to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 11: see the text and notes 25, 26.

15 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(4).

16 As to the meaning of 'person' see PARA 474 note 6.

17 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(5).

18 Ie in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(5).

19 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(6).

20 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(5) or (6).

21 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(7).

22 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(8).

23 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(11).

24 Ie under the provisions of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(2).

25 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(11).

26 Ie established in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(1).

27 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 11.

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483. Conversions of amounts into national currency.

The amounts constituting the owner's liability¹ must be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund². The value of the national currency, in terms of the Special Drawing Right, of a state party³ which is a member of the International Monetary Fund, must be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions⁴. The value of the national currency, in terms of the Special Drawing Right, of a state party which is not a member of the International Monetary Fund, must be calculated in a manner determined by that state⁵.

Nevertheless, a state party which is not a member of the International Monetary Fund and whose law does not permit the application of the above provisions⁶ may, at the time of ratification, acceptance, approval of or accession to the Convention⁷ or at any time thereafter, declare that the unit of account referred to above⁸ be equal to 15 gold francs⁹. The conversion of the gold franc into the national currency must be made according to the law of the state concerned¹⁰.

The calculation¹¹ and the conversion¹² mentioned in the above provisions must be made in such manner as to express in the national currency of the state party as far as possible the same real value for the amounts constituting the owner's liability as would result from the application¹³ of the above provisions¹⁴. States parties must communicate to the Secretary General¹⁵ the manner of calculation¹⁶, or the result of the conversion¹⁷, as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to the Convention and whenever there is a change in either¹⁸.

1 Ie the amounts mentioned in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(1): see PARA 482.

2 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(a). The fund is the fund referred to in art 9(3) (see PARA 482); art 9(9)(a).

3 As to signature etc of the Convention see PARA 515.

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(a). As to the International Monetary Fund see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 533; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1391.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(a).

6 Ie the provisions of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(a).

7 As to the meaning of 'Convention' see PARA 472.

8 Ie in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(a).

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(b). The gold franc referred to corresponds to 65½ milligrammes of gold of millesimal fineness 900: art 9(9)(b).

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(b).

11 Ie the calculation mentioned in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(a), last sentence.

12 Ie the conversion mentioned in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(b).

13 Ie of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(a), first two sentences.

14 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(c).

15 As to the meaning of 'Secretary General' see PARA 477 note 12.

16 Ie pursuant to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(a).

17 See note 10.

18 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(9)(c).

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484. Effect of constitution of a fund.

Where the owner¹, after an incident², has constituted a fund³ and is entitled to limit liability:

- 951 (1) no person⁴ having a claim for damage⁵ arising out of that incident is entitled to exercise any right against any other assets of the owner in respect of such claim; and
- 952 (2) the court or other competent authority of any state party⁶ must order the release of any ship⁷ or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and must similarly release any bail or other security furnished to avoid such arrest⁸.

The above provisions only apply, however, if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim⁹.

1 As to the meaning of 'owner' see PARA 480 note 1.

2 As to the meaning of 'incident' see PARA 474 note 6.

3 In accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9: see PARA 482.

4 As to the meaning of 'person' see PARA 474 note 6.

5 As to the meaning of 'damage' see PARA 475.

6 As to signature etc of the Convention see PARA 515.

7 As to the meaning of 'ship' see PARA 474 note 5.

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 10(1).

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 10(2).

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E. COMPULSORY INSURANCE OF THE OWNER

485. Maintenance of insurance etc.

The owner¹ of a ship² registered in a state party³ and actually carrying hazardous and noxious substances⁴ is required to maintain insurance or other financial security⁵, such as the guarantee of a bank or similar financial institution, to cover liability for damage⁶ under the Convention⁷.

Any sums provided by insurance or by other financial security maintained in accordance with the above provisions must be available exclusively for the satisfaction of claims under the Convention⁸.

Each state party must ensure, under its national law, that insurance or other security in the sums specified above is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea⁹.

Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage¹⁰. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability¹¹. The defendant may further invoke the defences, other than the bankruptcy or winding up of the owner, which the owner would have been entitled to invoke¹². Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner; but the defendant may not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant¹³. The defendant has in any event the right to require the owner to be joined in the proceedings¹⁴.

1 As to the meaning of 'owner' see PARA 480 note 1.

2 As to the meaning of 'ship' see PARA 474 note 5.

3 As to signature etc of the Convention see PARA 515.

4 As to the meaning of 'hazardous and noxious substances' see PARA 476.

5 Is fixed by applying the limits of liability prescribed in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(1): see PARA 482.

6 As to the meaning of 'damage' see PARA 475.

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(1). As to compulsory insurance certificates see PARA 486. As to the meaning of 'Convention' see PARA 472.

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(9).

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(11). As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(8).

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(8). The limit of liability is that prescribed in accordance with art 12(1): art 12(8).

12 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(8).

13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(8).

14 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(8).

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486. Compulsory insurance certificates.

A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of the Convention¹ must be issued to each ship² after the appropriate authority of a state party³ has determined that the requirements for compulsory insurance⁴ have been complied with⁵. With respect to a ship registered in a state party such compulsory insurance certificate must be issued or certified by the appropriate authority of the state of the ship's registry⁶; with respect to a ship not registered in a state party it may be issued or certified by the appropriate authority of any state party⁷. This compulsory insurance certificate must be in the prescribed form⁸ and must contain the following particulars:

- 953 (1) name of the ship, distinctive number or letters and port of registry;
- 954 (2) name and principal place of business of the owner;
- 955 (3) IMO ship identification number;
- 956 (4) type and duration of security;
- 957 (5) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- 958 (6) period of validity of certificate, which must not be longer than the period of validity of the insurance or other security⁹.

The compulsory insurance certificate must be in the official language or languages of the issuing state; if the language used is neither English, nor French nor Spanish, the text must include a translation into one of these languages¹⁰.

The compulsory insurance certificate must be carried on board the ship and a copy must be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a state party, with the authority of the state issuing or certifying the certificate¹¹.

An insurance or other financial security does not satisfy the requirements of these provisions if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate¹², before three months have elapsed from the date on which notice of its termination is given to the authorities¹³, unless the compulsory insurance certificate has been issued within such period¹⁴. The above provisions similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of these provisions¹⁵.

The state of the ship's registry must determine¹⁶ the conditions of issue and validity of the compulsory insurance certificate¹⁷.

Compulsory insurance certificates issued or certified under the authority of a state party¹⁸ must be accepted by other states parties for the purposes of the Convention and are to be regarded by other states parties as having the same force as compulsory insurance certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a state party¹⁹. A state party may at any time request consultation with the issuing or certifying state should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by the Convention²⁰.

A state party must not permit a ship under its flag to which these provisions apply to trade unless a certificate has been duly²¹ issued²².

1 As to the meaning of 'Convention' see PARA 472.

2 As to the meaning of 'ship' see PARA 474 note 5.

3 As to signature etc of the Convention see PARA 515.

4 Ie the requirements of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(1): see PARA 485.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(2).

6 For these purposes, 'state of the ship's registry' means, in relation to a registered ship, the state of registration of the ship and, in relation to an unregistered ship, the state whose flag the ship is entitled to fly: Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(13).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(2).

8 For the model form of compulsory insurance certificate see the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(2), Annex I.

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(2). If insurance or other financial security is not maintained in respect of a ship owned by a state party, the provisions of art 12 relating thereto are not applicable to such ship, but the ship must carry a compulsory insurance certificate issued by the appropriate authorities of the state of the ship's registry stating that the ship is owned by that state and that the ship's liability is covered within the limit prescribed in accordance with art 12(1): art 12(12). Such a compulsory insurance certificate must follow as closely as possible the model prescribed by art 12(2): art 12(12).

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(3).

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(4).

12 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(2).

13 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(4).

14 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(5).

15 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(5).

16 Ie subject to the provisions of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12.

17 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(6).

18 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 12(2).

19 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(7).

20 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(7).

21 le issued under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(2) or (12).

22 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12(10).

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F. COMPENSATION BY THE HNS FUND

(A) ESTABLISHMENT OF THE HNS FUND

487. Purpose of the HNS Fund.

The International Hazardous and Noxious Substances Fund (the 'HNS Fund') is established with the following aims:

- 959 (1) to provide compensation for damage¹ in connection with the carriage of hazardous and noxious substances² by sea³, to the extent that the protection otherwise afforded⁴ is inadequate or not available; and
- 960 (2) to give effect to the related tasks⁵.

The HNS Fund must in each state party⁶ be recognised as a legal person capable under the laws of that state of assuming rights and obligations and of being a party in legal proceedings before the courts of that state⁷. Each state party must recognise the Director⁸ as the legal representative of the HNS Fund⁹.

1 As to the meaning of 'damage' see PARA 475.

2 As to the meaning of 'hazardous and noxious substances' see PARA 476.

3 As to the meaning of 'carriage by sea' see PARA 477 note 4.

4 Ie afforded by the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 Ch II (arts 7-12): see PARA 480 et seq.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 arts 1(11), 13(1). The related tasks are those set out in art 15 (see PARA 490): art 13(1).

6 As to signature etc of the Convention see PARA 515.

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 13(2).

8 As to the meaning of 'Director' see PARA 478 note 11.

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 13(2).

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(B) COMPENSATION

488. Payment of compensation.

For the purpose of fulfilling its function¹, the HNS Fund² must pay compensation to any person³ suffering damage⁴ if such person has otherwise been unable to obtain full and adequate compensation for the damage⁵:

- 961 (1) because no liability for the damage otherwise arises⁶;
- 962 (2) because the owner⁷ liable for the damage⁸ is financially incapable of meeting the obligations under the Convention⁹ in full and any financial security that may be provided¹⁰ does not cover or is insufficient to satisfy the claims for compensation for damage, an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due¹¹ after having taken all reasonable steps to pursue the available legal remedies;
- 963 (3) because the damage exceeds¹² the owner's liability¹³.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise damage are treated as damage for these purposes¹⁴.

The aggregate amount of compensation payable by the HNS Fund¹⁵ is in respect of any one incident limited¹⁶, so that the total sum of that amount and any amount of compensation actually paid¹⁷ for damage within the scope of application of the Convention¹⁸ must not exceed 250 million units of account¹⁹. The aggregate amount of compensation so payable by the HNS Fund for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character must not exceed 250 million units of account²⁰.

The amounts mentioned in the above provisions must be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund²¹ as to the first date of payment of compensation²².

Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable²³, the amount available must be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under the Convention is the same for all claimants²⁴. Claims in respect of death or personal injury have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount duly²⁵ established²⁶.

The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with the Convention can be paid even if the owner has not constituted²⁶ a fund²⁷.

¹ ie its function under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 13(1)(a): see PARA 487 head (1).

- 2 As to the meaning of 'HNS Fund' see PARA 487.
- 3 As to the meaning of 'person' see PARA 474 note 6.
- 4 As to the meaning of 'damage' see PARA 475.
- 5 *Ie* under the terms of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 Ch II (arts 7-12): see PARA 480 et seq.
- 6 *Ie* under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 Ch II (arts 7-12).
- 7 As to the meaning of 'owner' see PARA 480 note 1.
- 8 See note 6.
- 9 As to the meaning of 'Convention' see PARA 472.
- 10 See note 6.
- 11 See note 6.
- 12 *Ie* exceeds the owner's liability under the terms of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 Ch II (arts 7-12).
- 13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(1). As to the circumstances in which compensation is not payable see PARA 489.
- 14 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(2).
- 15 *Ie* under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14.
- 16 *Ie* except as otherwise provided in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(5)(b): see the text and note 20.
- 17 See note 6.
- 18 *Ie* as defined in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 3: see PARA 474.
- 19 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(5)(a). Interest accrued on a fund constituted in accordance with art 9(3) (see PARA 482), if any, must not be taken into account for the computation of the maximum compensation payable by the HNS Fund under art 14: art 14(5)(c).
- 20 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(5)(b).
- 21 As to the Assembly see PARAS 499, 500.
- 22 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(5)(d).
- 23 *Ie* under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(5).
- 24 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(6).
- 25 *Ie* established in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(5).
- 26 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(6).

27 le in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 Ch II (arts 7-12).

28 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(7). In such cases art 14(5)(d) (see the text and notes 20, 21) applies accordingly: art 14(7).

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489. Circumstances in which compensation not payable.

The HNS Fund¹ incurs no obligation to pay compensation² if:

- 964 (1) it proves that the damage³ resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances⁴ which had escaped or been discharged from a warship or other ship⁵ owned or operated by a state and used, at the time of the incident⁶, only on government non-commercial service; or
- 965 (2) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships⁷.

If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person⁸. The HNS Fund must in any event be exonerated to the extent that the owner may⁹ have been exonerated¹⁰. There is, however, no such exoneration of the HNS Fund with regard to preventive measures¹¹.

1 As to the meaning of 'HNS Fund' see PARA 487.

2 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(1), (2): see PARA 488.

3 As to the meaning of 'damage' see PARA 475.

4 As to the meaning of 'hazardous and noxious substances' see PARA 476.

5 As to the meaning of 'ship' see PARA 474 note 5.

6 As to the meaning of 'incident' see PARA 474 note 6.

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(3).

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(4).

9 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7(3): see PARA 480.

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(4). As to the meaning of 'preventive measures' see PARA 474 note 6.

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(4).

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(C) RELATED TASKS OF THE HNS FUND

490. In general.

For the purpose of fulfilling its function¹, the HNS Fund² has the following tasks:

- 966 (1) to consider claims made against the HNS Fund;
- 967 (2) to prepare an estimate in the form of a budget for each calendar year of, in relation to expenditure:
- 117
 - 59. (a) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and
 - 60. (b) payments to be made by the HNS Fund in the relevant year;
- 118 and, in relation to income:
- 968
 - 119 61. (c) surplus funds from operations in preceding years, including any interest;
 - 62. (d) initial contributions³ to be paid in the course of the year;
 - 63. (e) annual contributions⁴ if required to balance the budget; and
 - 64. (f) any other income;
- 120
- 969 (3) to use at the request of a state party⁵ its good offices as necessary to assist that state to secure promptly such personnel, material and services as are necessary to enable the state to take measures to prevent or mitigate damage⁶ arising from an incident⁷ in respect of which the HNS Fund may be called upon to pay compensation under the Convention⁸; and
- 970 (4) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures⁹ against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under the Convention¹⁰.

¹ ie its function under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 13(1)(a): see PARA 487 head (1).

² As to the meaning of 'HNS Fund' see PARA 487.

³ As to initial contributions see PARA 495.

⁴ As to annual contributions see PARAS 492-494.

⁵ As to signature etc of the Convention see PARA 515.

⁶ As to the meaning of 'damage' see PARA 475.

⁷ As to the meaning of 'incident' see PARA 474 note 6.

⁸ As to the meaning of 'Convention' see PARA 472.

9 As to the meaning of 'preventive measures' see PARA 474 note 6.

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 15.

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(D) CONTRIBUTIONS

491. General provisions on contributions.

The HNS Fund¹ must have a general account, which must be divided into sectors².

The HNS Fund must also have³ separate accounts in respect of:

- 971 (1) oil⁴ ('oil account');
- 972 (2) liquefied natural gases of light hydrocarbons with methane as the main constituent ('LNG') ('LNG account'); and
- 973 (3) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents ('LPG') ('LPG account')⁵.

There must be initial contributions⁶ and, as required, annual contributions⁷ to the HNS Fund⁸.

Contributions to the HNS Fund must be made into the general account⁹, to separate accounts¹⁰ and to either the general account or separate accounts¹¹. The general account must be available¹² to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account must be available to compensate damage caused by a hazardous and noxious substance¹³ covered by that account¹⁴.

1 As to the meaning of 'HNS Fund' see PARA 487.

2 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 16(1).

3 Ie subject to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(3), (4): see PARA 494.

4 Ie as defined in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(5)(a)(i): see PARA 476 head (1)(a).

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 16(2).

6 As to initial contributions see PARA 495.

7 As to annual contributions see PARAS 492-494.

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 16(3).

9 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18: see PARA 493.

10 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19: see PARA 494.

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 16(4). Those payments are made in accordance with art 20 (see PARA 495) or, as the case may be, art 21(5) (see PARA 496): art 16(4).

12 Is subject to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(6): see PARA 494. For the purposes of art 18 (see PARA 493), art 19(1)(a)(i) (see PARA 494 head (1)(a)), art 19(1)(a)(ii) (see PARA 494 head (1)(b)), art 19(1)(c) (see PARA 494 head (3)), art 20 (see PARA 495) and art 21(5) (see PARA 496), where the quantity of a given type of contributing cargo received in the territory of a state party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same state party in that year by any associated person or persons exceeds the limit specified therein, such a person must pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit: art 16(5). 'Associated person' means any subsidiary or commonly controlled entity; and the question whether a person comes within this definition is to be determined by the national law of the state concerned: art 16(6). As to the meaning of 'contributing cargo' see PARA 478 note 13. As to signature etc of the Convention see PARA 515.

13 As to the meaning of 'hazardous and noxious substances' see PARA 476.

14 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 16(4).

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492. General provisions on annual contributions.

Annual contributions to the general account and to each separate account must be levied only as required to make payments by the account in question¹.

Annual contributions payable² must be determined by the Assembly³ and must be duly calculated⁴ on the basis of the units of contributing cargo⁵ received or, as the case may be⁶, discharged during the preceding calendar year or such other year as the Assembly may decide⁷.

The Assembly must decide the total amount of annual contributions to be levied to the general account and to each separate account⁸. Following that decision the Director⁹ must, in respect of each state party¹⁰, calculate for each person liable to pay contributions¹¹, the amount of that person's annual contribution to each account, on the basis of a fixed sum for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide¹². For the general account, the above-mentioned fixed sum per unit of contributing cargo for each sector must be calculated pursuant to the relevant regulations¹³. For each separate account, the fixed sum per unit of contributing cargo referred to above must be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account¹⁴.

The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts¹⁵.

The Assembly must also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage¹⁶.

1 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 17(1).

2 I.e. pursuant to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18 (see PARA 493), art 19 (see PARA 494) and art 21(5) (see PARA 496).

3 As to the Assembly see PARAS 499, 500.

4 I.e. in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 arts 18, 19 and 21.

5 As to the meaning of 'contributing cargo' see PARA 478 note 13.

6 I.e. in respect of cargoes referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(1)(b): see PARA 494 head (2).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 17(2).

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 17(3).

9 As to the meaning of 'Director' see PARA 478 note 11.

10 As to signature etc of the Convention see PARA 515.

11 In accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 arts 18, 19(1), 21(5).

12 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 17(3).

13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 reg 17(3). The relevant regulations are those contained in reg 17(3), Annex II.

14 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 reg 17(3).

15 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 reg 17(4).

16 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 reg 17(5).

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493. Annual contributions to the general account.

Annual contributions to the general account must be made¹ in respect of each state party² by any person who was the receiver³ in that state in the preceding calendar year, or such other year as the Assembly⁴ may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo⁵, other than specified substances⁶ which fall within the following sectors:

- 974 (1) solid bulk materials⁶;
- 975 (2) substances referred to below⁷; and
- 976 (3) other substances⁸.

Annual contributions are also payable to the general account by persons who would have been liable to pay contributions to a separate account⁹ had its operation not been¹⁰ postponed or suspended¹¹. Each separate account the operation of which has been so postponed or suspended forms a separate sector within the general account¹².

1 Ie subject to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 16(5); see PARA 491 note 12.

2 As to signature etc of the Convention see PARA 515.

3 As to the meaning of 'receiver' see PARA 480 note 16.

4 As to the Assembly see PARAS 499, 500.

5 Ie substances referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(1); see PARA 494.

6 Ie solid bulk materials referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 1(5)(a)(vii); see PARA 476 head (1)(g).

7 Ie substances referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18(2).

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18(1).

9 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(1); see PARA 494.

10 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19.

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18(2).

12 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18(2).

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494. Annual contributions to separate accounts.

Annual contributions to separate accounts must be made¹ in respect of each state party²:

977 (1) in the case of the oil account³:

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65. (a) by any person who has received in that state in the preceding calendar year, or such other year as the Assembly⁴ may decide, total quantities exceeding 150,000 tonnes of contributing oil⁵ and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund⁶; and

66. (b) by any person who was the receiver⁷ in that state in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk⁸;

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978 (2) in the case of the LNG account⁹, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG¹⁰ cargo discharged in a port or terminal¹¹ of that state;

979 (3) in the case of the LPG account¹², by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that state of total quantities exceeding 20,000 tonnes of LPG¹³.

The separate accounts referred to above become effective¹⁴ at the same time as the general account¹⁵.

The initial operation of a separate account¹⁶ is to be postponed until such time as the quantities of contributing cargo¹⁷ in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:

980 (i) 350 million tonnes of contributing cargo in respect of the oil account;

981 (ii) 20 million tonnes of contributing cargo in respect of the LNG account; and

982 (iii) 15 million tonnes of contributing cargo in respect of the LPG account¹⁸.

The Assembly may suspend the operation of a separate account if:

983 (A) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in heads (i) to (iii) above; or

984 (B) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed 10 per cent of the most recent levy¹⁹ to that account²⁰.

The Assembly may reinstate the operation of a separate account which has been so suspended²¹.

Any person who would be liable to pay contributions to a separate account the operation of which has been so postponed²² or suspended²³, must pay into the general account the contributions due by that person in respect of that separate account²⁴. For the purpose of calculating future contributions, the postponed or suspended separate account forms a new sector in the general account and is subject to the HNS points system²⁵.

1 Ie subject to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 16(5); see PARA 491 note 12.

2 As to signature etc of the Convention see PARA 515.

3 As to the meaning of the 'oil account' see PARA 491.

4 As to the Assembly see PARAS 499, 500.

5 Ie as defined in the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (Brussels, 18 November 1971; TS 95 (1978); Cmnd 7383) art 1(3).

6 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 10.

7 As to the meaning of 'receiver' see PARA 480 note 16.

8 Ie listed in the International Convention for the Prevention of Pollution from Ships 1973 (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748) Annex I App I (modified by the Protocol (London, 1 June 1978 to 31 May 1979; Misc 27 (1978); Cmnd 7347) relating thereto).

9 As to the meaning of the 'LNG account' see PARA 491.

10 As to the meaning of 'LNG' see PARA 491.

11 As to the meaning of 'terminal' see PARA 478 note 13.

12 As to the meaning of the 'LPG account' see PARA 491.

13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(1). As to the meaning of 'LPG' see PARA 491.

14 Ie subject to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(3).

15 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(2).

16 Ie referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 16(2); see PARA 491.

17 As to the meaning of 'contributing cargo' see PARA 478 note 13.

18 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(3).

19 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(1).

20 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(4).

21 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(5).

22 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(3).

23 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(4).

24 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(6).

25 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(6). The HNS points system is defined in art 19(6), Annex II: art 19(6).

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495. Initial contributions.

In respect of each state party¹, initial contributions must be made of an amount which must for each person liable to pay contributions² be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo³ received or, in the case of LNG⁴, discharged in that state, during the calendar year preceding that in which the Convention enters into force for that state⁵.

The fixed sum and the units for the different sectors within the general account as well as for each separate account⁶ must be determined by the Assembly⁷.

Initial contributions must be paid within three months following the date on which the HNS Fund⁸ issues invoices in respect of each state party to persons liable⁹ to pay contributions¹⁰.

1 As to signature etc of the Convention see PARA 515.

2 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 16(5) (see PARA 491 note 12), art 18 (see PARA 493), art 19 (see PARA 494) and art 21(5) (see PARA 496).

3 As to the meaning of 'contributing cargo' see PARA 478 note 13.

4 As to the meaning of 'LNG' see PARA 491.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 20(1). As to entry into force of the Convention see PARA 516.

6 Ie referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 20(1).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 20(2).

8 As to the meaning of 'HNS Fund' see PARA 487.

9 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 20(1).

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 20(3).

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496. Reports.

Each state party¹ must ensure that any person liable to pay contributions² appears on a list to be established and kept up to date by the Director³ in accordance with the following provisions⁴.

For these purposes, each state party must communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund⁵, the name and address of any person who in respect of the state is liable to pay contributions⁶, as well as data on the relevant quantities of contributing cargo⁷ for which such a person is liable to contribute in respect of the preceding calendar year⁸. For the purposes of ascertaining who are, at any given time, the persons liable so to pay contributions and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list is prima facie evidence of the facts stated therein⁹.

Where a state party does not fulfil its obligations to communicate to the Director the information referred to above and this results in a financial loss for the HNS Fund, that state party is liable to compensate the HNS Fund for such loss¹⁰. The Assembly¹¹ must, on the recommendation of the Director, decide whether such compensation be payable by a state party¹².

In respect of contributing cargo carried from one port or terminal¹³ of a state party to another port or terminal located in the same state and discharged there, states parties have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are¹⁴ payable¹⁵. The state party must, at the time of reporting, either:

- 985 (1) notify the HNS Fund that that state will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or
- 986 (2) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers¹⁶ or, in the case of LNG¹⁷, the title holder who discharges within the jurisdiction of that state party, for the amount payable by each of them; and these persons must be identified in accordance with the national law of the state concerned¹⁸.

1 As to signature etc of the Convention see PARA 515.

2 I.e in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18 (see PARA 493), art 19 (see PARA 494) or art 21(5) (see the text and notes 13-15).

3 As to the meaning of 'Director' see PARA 478 note 11.

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 21(1).

5 As to the meaning of 'HNS Fund' see PARA 487.

6 See note 2.

7 As to the meaning of 'contributing cargo' see PARA 478 note 13.

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 21(2).

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 21(3).

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 21(4).

11 As to the Assembly see PARAS 499, 500.

12 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 21(4).

13 As to the meaning of 'terminal' see PARA 478 note 13.

14 In pursuant to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 16(5): see PARA 491 note 12.

15 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 21(5).

16 As to the meaning of 'receiver' see PARA 480 note 16.

17 As to the meaning of 'LNG' see PARA 491.

18 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 21(5).

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497. Non-payment of contributions.

The amount of any contribution due¹ and which is in arrears bears interest at a rate which must be determined in accordance with the internal regulations of the HNS Fund², provided that different rates may be fixed for different circumstances³.

Where a person who is liable to pay contributions⁴ does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director⁵ must take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due⁶. Where, however, the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly⁷ may, upon recommendation of the Director, decide that no action be taken or continued against the contributor⁸.

1 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18 (see PARA 493), art 19 (see PARA 494), art 20 (see PARA 495) or art 21(5) (see PARA 496).

2 As to the meaning of 'HNS Fund' see PARA 487.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 22(1).

4 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18, 19, 20 or 21(5).

5 As to the meaning of 'Director' see PARA 478 note 11.

6 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 22(2).

7 As to the Assembly see PARAS 499, 500.

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 22(2).

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498. Optional liability of states parties for the payment of contributions.

A state party¹ may², at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter, declare that it assumes responsibility for obligations imposed by the Convention³ on any person liable to pay contributions⁴ in respect of hazardous and noxious substances⁵ received or discharged in the territory of that state⁶. Such a declaration must be made in writing and must specify which obligations are assumed⁷.

Where such a declaration is made prior to the entry into force of the Convention⁸, it must be deposited with the Secretary General⁹ who must after the entry into force of the Convention communicate the declaration to the Director¹⁰.

Such a declaration which is made after the entry into force of the Convention must be deposited with the Director¹¹.

A declaration made in accordance with the above provisions may be withdrawn by the relevant state giving notice thereof in writing to the Director; such a notification takes effect three months after the Director's receipt thereof¹².

Any state which is bound by a declaration made under the above provisions must, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke¹³.

1 As to signature etc of the Convention see PARA 515.

2 Ie without prejudice to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 21(5): see PARA 496.

3 As to the meaning of 'Convention' see PARA 472.

4 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18 (see PARA 493), art 19 (see PARA 494), art 20 (see PARA 495) or art 21(5) (see PARA 496).

5 As to the meaning of 'hazardous and noxious substances' see PARA 476.

6 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 23(1).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 23(1).

8 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 46: see PARA 516.

9 As to the meaning of 'Secretary General' see PARA 477 note 12.

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 23(2). As to the meaning of 'Director' see PARA 478 note 11.

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 23(3).

12 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 23(4).

13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 23(5).

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(E) ORGANISATION AND ADMINISTRATION

499. The Assembly and its functions.

The HNS Fund¹ must have an Assembly²; and the Assembly must consist of all states Parties³ to the Convention⁴.

The functions of the Assembly are:

- 987 (1) to elect at each regular session⁵ its President and two Vice-Presidents who hold office until the next regular session;
- 988 (2) to determine its own rules of procedure, subject to the provisions of the Convention;
- 989 (3) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund⁶ and the related tasks of the HNS Fund⁷;
- 990 (4) to appoint the Director⁸ and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
- 991 (5) to adopt the annual budget⁹;
- 992 (6) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo¹⁰;
- 993 (7) to appoint auditors and approve the accounts of the HNS Fund;
- 994 (8) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation¹¹ and to determine the terms and conditions according to which provisional payments in respect of claims be made with a view to ensuring that victims of damage are compensated as promptly as possible;
- 995 (9) to establish a Committee on Claims for Compensation with at least seven and not more than 15 members and any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly must endeavour to secure an equitable geographical distribution of members and to ensure that the states parties are appropriately represented; the Rules of Procedure of the Assembly may be applied mutatis mutandis for the work of such subsidiary body;
- 996 (10) to determine which states not party to the Convention, which Associate Members of the Organisation¹² and which intergovernmental and international non-governmental Organisations be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;
- 997 (11) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;
- 998 (12) to supervise the proper execution of the Convention and of its own decisions;
- 999 (13) to review every five years the implementation of the Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and

1000 (14) to perform such other functions as are allocated to it under the Convention or are otherwise necessary for the proper operation of the HNS Fund¹³.

1 As to the meaning of 'HNS Fund' see PARA 487.

2 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 24. As to the First Session of the Assembly see PARA 514.

3 As to signature etc of the Convention see PARA 515.

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 25.

5 As to the meetings of the Assembly see PARA 500.

6 Ie as described in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 13(1)(a): see PARA 487 head (1).

7 Ie listed in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 15: see PARA 490.

8 As to the meaning of 'Director' see PARA 478 note 11.

9 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 15(b): see PARA 490 head (2).

10 As to the meaning of 'contributing cargo' see PARA 478 note 13.

11 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14: see PARAS 488, 489.

12 As to the meaning of 'Organisation' see PARA 477 note 12.

13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 26.

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500. Meetings of the Assembly.

Regular sessions of the Assembly¹ must take place once every calendar year upon convocation by the Director²; and extraordinary sessions of the Assembly must be convened by the Director at the request of at least one-third of the members of the Assembly³ and may be convened on the Director's own initiative after consultation with the President⁴ of the Assembly⁵. The Director must give members at least 30 days' notice of such sessions⁶.

A majority of the members of the Assembly constitutes a quorum for its meetings⁷.

The following provisions apply to voting in the Assembly:

- 1001 (1) each member has one vote;
- 1002 (2) decisions of the Assembly must be made⁸ by a majority vote of the members present and voting;
- 1003 (3) decisions where a two-thirds' majority is required must be a two-thirds' majority vote of members present; and
- 1004 (4) for these purposes, the phrase 'members present' means 'members present at the meeting at the time of the vote', and the phrase 'members present and voting' means 'members present and casting an affirmative or negative vote'; members who abstain from voting are to be considered as not voting⁹.

The following decisions of the Assembly require a two-thirds' majority:

- 1005 (a) a decision¹⁰ to suspend or reinstate the operation of a separate account;
- 1006 (b) a decision¹¹ not to take or continue action against a contributor;
- 1007 (c) the appointment of the Director¹²;
- 1008 (d) the establishment of subsidiary bodies¹³ and matters relating to such establishment; and
- 1009 (e) a decision¹⁴ that the Convention¹⁵ continue to be in force¹⁶.

1 As to the Assembly see PARA 499.

2 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 27(1). As to the meaning of 'Director' see PARA 478 note 11.

3 As to membership of the Assembly see PARA 499.

4 As to the election of the President see PARA 499.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 27(2).

6 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 27(2).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 28.

8 le except as otherwise provided in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 34: see the text and notes 11-16.

9 See note 8.

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 33.

11 le a decision under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 19(4) or (5): see PARA 494.

12 le a decision under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 22(2): see PARA 497.

13 le under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 26(d): see PARA 499 head (4).

14 le under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 26(i): see PARA 499 head (9).

15 le a decision under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 51(1): see PARA 521.

16 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 34.

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501. The Secretariat.

The HNS Fund¹ must have a Secretariat headed by the Director²; and the Secretariat must comprise the Director and such staff as the administration of the HNS Fund may require³.

1 As to the meaning of 'HNS Fund' see PARA 487.

2 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 24. As to the Director see PARA 502.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 29(1).

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502. The Director.

The Director is the chief administrative officer of the HNS Fund¹. Subject to the instructions given by the Assembly², the Director must perform those functions which are assigned to the Director by the Convention³, the internal regulations of the HNS Fund and the Assembly⁴.

The Director must in particular:

- 1010 (1) appoint the personnel required for the administration of the HNS Fund;
- 1011 (2) take all appropriate measures with a view to the proper administration of the assets of the HNS Fund;
- 1012 (3) collect the contributions due under the Convention⁵;
- 1013 (4) to the extent necessary to deal with claims against the HNS Fund and to carry out the other functions of the HNS Fund, employ the services of legal, financial and other experts;
- 1014 (5) take all appropriate measures for dealing with claims against the HNS Fund, within the limits and on conditions to be laid down in the internal regulations of the HNS Fund, including the final settlement of claims without the prior approval of the Assembly where these regulations so provide;
- 1015 (6) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
- 1016 (7) prepare, in consultation with the President of the Assembly⁶, and publish a report on the activities of the HNS Fund during the previous calendar year; and
- 1017 (8) prepare, collect and circulate the documents and information which may be required for the work of the Assembly and subsidiary bodies⁷.

The Director is the legal representative of the HNS Fund⁸.

¹ Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 30(1). As to the meaning of 'HNS Fund' see PARA 487.

² As to the Assembly see PARAS 499, 500.

³ As to the meaning of 'Convention' see PARA 472.

⁴ Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 30(1).

⁵ *le* while observing in particular the provisions of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 22(2): see PARA 497.

⁶ As to the election of the President see PARA 499.

⁷ Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 30(2).

⁸ Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 29(2).

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503. Performance of duties.

In the performance of their duties the Director¹ and the staff and experts appointed by the Director must not seek or receive instructions from any government or from any authority external to the HNS Fund². They must refrain from any action which might adversely reflect on their position as international officials³. Each state party⁴ on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by the Director, and not to seek to influence them in the discharge of their duties⁵.

1 As to the Director see PARA 502.

2 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 31.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 31.

4 As to signature etc of the Convention see PARA 515.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 31.

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504. Finances.

Each state party¹ must bear the salary, travel and other expenses of its own delegation to the Assembly² and of its representatives on subsidiary bodies³.

Any other expenses incurred in the operation of the HNS Fund must be borne by the HNS Fund⁴.

1 As to signature etc of the Convention see PARA 515.

2 As to the Assembly see PARAS 499, 500.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 32(1).

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 32(2). As to the meaning of 'HNS Fund' see PARA 487.

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(F) TAX EXEMPTIONS AND CURRENCY REGULATIONS

505. In general.

The HNS Fund¹, its assets, income, including contributions, and other property necessary for the exercise of its functions² must enjoy in all states parties³ exemption from all direct taxation⁴.

When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims⁵, the cost of which include indirect taxes or sales taxes, the governments of the states parties must take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes⁶. Goods thus acquired must not be sold against payment or given away free of charge unless it is done according to conditions approved by the government of the state having granted or supported the remission or refund⁷.

No exemption must be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services⁸.

The HNS Fund must enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use⁹. Articles thus imported must not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the government of that country¹⁰.

Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund are subject to the fiscal legislation of the state where they are taxable, no special exemption or other benefit being conferred on them in this respect¹¹.

Notwithstanding existing or future regulations concerning currency or transfers, states parties must authorise the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction¹².

1 As to the meaning of 'HNS Fund' see PARA 487.

2 I.e. as described in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 13(1): see PARA 487.

3 As to signature etc of the Convention see PARA 515.

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 35(1).

5 I.e. as set out in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 13(1).

6 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 35(2).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 35(2).

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 35(3).

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 35(4).

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 35(4).

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 35(5).

12 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 35(6).

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(G) CONFIDENTIALITY OF INFORMATION

506. In general.

Information relating to individual contributors supplied for the purpose of the Convention¹ must not be divulged outside the HNS Fund², except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings³.

1 As to the meaning of 'Convention' see PARA 472.

2 As to the meaning of 'HNS Fund' see PARA 487.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 36.

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G. CLAIMS AND ACTIONS

507. Limitation of actions.

Rights to compensation under the provisions relating to liability¹ are extinguished unless an action is brought thereunder within three years from the date when the person² suffering the damage³ knew or ought reasonably to have known of the damage and of the identity of the owner⁴.

Rights to compensation under the HNS Fund⁵ are extinguished unless an action is brought thereunder or a notification has been made⁶ within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage⁷.

In no case, however, may an action be brought later than ten years from the date of the incident which caused the damage⁸. Where the incident consists of a series of occurrences, that ten-year period runs from the date of the last of such occurrences⁹.

1 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 Ch II (arts 7-12): see PARA 480 et seq.

2 As to the meaning of 'person' see PARA 474 note 6.

3 As to the meaning of 'damage' see PARA 475.

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 37(1). As to the meaning of 'owner' see PARA 480 note 1.

5 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 Ch III (arts 13-36): see PARA 487 et seq. As to the meaning of 'HNS Fund' see PARA 487.

6 Ie pursuant to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(7): see PARA 509.

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 37(2).

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 37(3).

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 37(4).

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508. Jurisdiction in respect of action against the owner.

Where an incident¹ has caused damage² in the territory, including the territorial sea or in a specified area³, of one or more states parties⁴, or preventive measures⁵ have been taken to prevent or minimise damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner⁶ or other person providing financial security for the owner's liability only in the courts of any such states parties⁷.

Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any state and either the conditions for application of the Convention⁸ have been fulfilled or preventive measures to prevent or minimise such damage have been taken, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of:

- 1018 (1) the state party where the ship⁹ is registered or, in the case of an unregistered ship, the state party whose flag the ship is entitled to fly; or
- 1019 (2) the state party where the owner has habitual residence or where the principal place of business of the owner is established; or
- 1020 (3) the state party where a fund has been duly¹⁰ constituted¹¹.

Reasonable notice of any action so taken¹² must be given to the defendant¹³.

Each state party must ensure that its courts have jurisdiction to entertain actions for compensation under the Convention¹⁴.

After a fund¹⁵ has been constituted by the owner or by the insurer or other person providing financial security¹⁶, the courts of the state in which such fund is constituted have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund¹⁷.

1 As to the meaning of 'incident' see PARA 474 note 6.

2 As to the meaning of 'damage' see PARA 475.

3 I.e. an area referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 3(b): see PARA 474 head (2).

4 As to signature etc of the Convention see PARA 515.

5 As to the meaning of 'preventive measures' see PARA 474 note 6.

6 As to the meaning of 'owner' see PARA 480 note 1.

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38(1).

8 I.e. set out in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 3(c): see PARA 474 head (3). As to the meaning of 'Convention' see PARA 472.

9 As to the meaning of 'ship' see PARA 474 note 5.

10 le constituted in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(3): see PARA 482.

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38(2).

12 le under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38(1) or (2).

13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38(3).

14 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38(4).

15 le a fund under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9: see PARA 482.

16 le in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 12: see PARA 485.

17 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38(5).

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509. Jurisdiction in respect of action against the HNS Fund or taken by the HNS Fund.

Subject to the following provisions, any action against the HNS Fund¹ for compensation² must be brought only before a court having jurisdiction³ in respect of actions against the owner⁴ who is liable for damage⁵ caused by the relevant incident⁶ or before a court in a state party⁷ which would have been competent if an owner had been liable⁸.

In the event that the ship⁹ carrying the hazardous or noxious substances¹⁰ which caused the damage has not been identified, the provisions relating to jurisdiction¹¹ apply mutatis mutandis to actions against the HNS Fund¹².

Each state party must ensure that its courts have jurisdiction to entertain such actions¹³ against the HNS Fund¹⁴.

Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court has exclusive jurisdiction over any action against the HNS Fund for compensation¹⁵ in respect of the same damage¹⁶.

Each state party must ensure that the HNS Fund has the right to intervene as a party to any legal proceedings instituted in accordance with the Convention¹⁷ before a competent court of that state against the owner or the owner's guarantor¹⁸.

The HNS Fund is not bound¹⁹ by any judgment or decision in proceedings to which it has not been a party or by any settlement to which it is not a party²⁰.

Where an action under the Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a state party, each party to the proceedings is entitled²¹ under the national law of that state to notify the HNS Fund of the proceedings²². Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgment rendered by the court in such proceedings becomes binding, after it has become final and enforceable in the state where the judgment was given, upon the HNS Fund in the sense that the facts and findings in that judgment may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings²³.

1 As to the meaning of 'HNS Fund' see PARA 487.

2 I.e. under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14: see PARAS 488, 489.

3 I.e. under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38: see PARA 508.

4 As to the meaning of 'owner' see PARA 480 note 1.

5 As to the meaning of 'damage' see PARA 475.

6 As to the meaning of 'incident' see PARA 474 note 6.

- 7 As to signature etc of the Convention see PARA 515.
- 8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(1).
- 9 As to the meaning of 'ship' see PARA 474 note 5.
- 10 As to the meaning of 'hazardous and noxious substances' see PARA 476.
- 11 Ie the provisions of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38(1): see PARA 508.
- 12 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(2).
- 13 Ie such actions as are referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(1).
- 14 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(3).
- 15 See note 2.
- 16 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(4).
- 17 As to the meaning of 'Convention' see PARA 472.
- 18 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(5).
- 19 Ie except as otherwise provided in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(7): see the text and notes 21, 22.
- 20 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(6).
- 21 Ie without prejudice to the provisions of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(5).
- 22 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(7).
- 23 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(7).

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510. Recognition and enforcement.

Any judgment given by a court with jurisdiction¹, which is enforceable in the state of origin where it is no longer subject to ordinary forms of review, must be recognised in any state party², except:

- 1021 (1) where the judgment was obtained by fraud; or
- 1022 (2) where the defendant was not given reasonable notice and a fair opportunity to present the case³.

A judgment so recognised is enforceable in each state party as soon as the formalities required in that state have been complied with⁴. The formalities must not permit the merits of the case to be reopened⁴.

Any judgment given against the HNS Fund⁵ by a court having jurisdiction⁶ must⁷, when it has become enforceable in the state of origin and is in that state no longer subject to ordinary forms of review, be recognised and is enforceable in each state party⁸.

1 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 38: see PARA 508.

2 As to signature etc of the Convention see PARA 515.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 40(1).

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 40(2).

5 As to the meaning of 'HNS Fund' see PARA 487.

6 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 39(1), (3): see PARA 509.

7 Ie subject to any decision concerning the distribution referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(6): see PARA 488.

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 40(3).

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511. Subrogation and recourse.

The HNS Fund¹ acquires, in respect of any amount of compensation for damage paid by the HNS Fund², by subrogation the rights that the person³ so compensated may enjoy against the owner⁴ or the owner's guarantor⁵.

Nothing in the Convention prejudices any rights of recourse or subrogation of the HNS Fund against any person⁶, in so far as they can limit their liability⁷. In any event the right of the HNS Fund to subrogation against such persons must not be less favourable than that of an insurer of the person to whom compensation has been paid⁸.

Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a state party⁹ or agency thereof which has paid compensation for damage in accordance with provisions of national law acquires by subrogation the rights which the person so compensated would have enjoyed under the Convention¹⁰.

1 As to the meaning of 'HNS Fund' see PARA 487.

2 In accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 14(1): see PARA 488.

3 As to the meaning of 'person' see PARA 474 note 6.

4 As to the meaning of 'owner' see PARA 480 note 1.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 41(1).

6 In including persons referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 7(2)(d) (see PARA 480 head (4)), other than those referred to in art 41(1).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 41(2).

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 41(2).

9 As to signature etc of the Convention see PARA 515.

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 41(3).

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512. Supersession of other conventions.

The Convention¹ supersedes any convention in force or open for signature, ratification or accession at the date on which the Convention is opened for signature, but only to the extent that such convention would be in conflict with it; but nothing in this provision affects the obligations of states parties² to states not party to the Convention arising under such convention³.

1 As to the meaning of 'Convention' see PARA 472.

2 As to signature etc of the Convention see PARA 515.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 42.

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H. TRANSITIONAL PROVISIONS

513. Information on contributing cargo.

When depositing an instrument of ratification, acceptance, approval or accession¹, and annually thereafter until the Convention enters into force² for a state, that state must submit to the Secretary General³ data on the relevant quantities of contributing cargo⁴ received or, in the case of LNG⁵, discharged in that state during the preceding calendar year in respect of the general account and each separate account⁶.

1 le an instrument referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 45(3): see PARA 515.

2 As to entry into force see PARA 516.

3 As to the meaning of 'Secretary General' see PARA 477 note 12.

4 As to the meaning of 'contributing cargo' see PARA 478 note 13.

5 As to the meaning of 'LNG' see PARA 491.

6 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 43.

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514. First session of the Assembly.

The Secretary General¹ must convene the first session of the Assembly². This session must take place as soon as possible after the entry into force³ of the Convention⁴ and in any case not more than 30 days after such entry into force⁵.

1 As to the meaning of 'Secretary General' see PARA 477 note 12.

2 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 44.

3 As to entry into force see PARA 516.

4 As to the meaning of 'Convention' see PARA 472.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 44.

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I. SUPPLEMENTAL PROVISIONS

515. Signature, ratification etc.

The Convention¹ is open for signature at the headquarters of the Organisation² from 1 October 1996 to 30 September 1997 and thereafter remains open for accession³.

States may express their consent to be bound by the Convention by:

- 1023 (1) signature without reservation as to ratification, acceptance or approval; or
- 1024 (2) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- 1025 (3) accession⁴.

Ratification, acceptance, approval or accession must be effected by the deposit of an instrument to that effect with the Secretary General⁵.

1 As to the meaning of 'Convention' see PARA 472.

2 As to the meaning of 'Organisation' see PARA 477 note 12.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 45(1).

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 45(2).

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 45(3). As to the meaning of 'Secretary General' see PARA 477 note 12.

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516. Entry into force.

The Convention¹ enters into force 18 months after the date on which the following conditions are fulfilled:

- 1026 (1) at least 12 states, including four states each with not less than two million units of gross tonnage, have expressed their consent to be bound by it; and
- 1027 (2) the Secretary General² has received information³ that those persons in such states who would be liable to contribute⁴ have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account⁵.

For a state which expresses its consent to be bound by the Convention after the conditions for entry into force have been met, such consent takes effect three months after the date of expression of such consent, or on the date on which the Convention enters into force⁶, whichever is the later⁷.

1 As to the meaning of 'Convention' see PARA 472.

2 As to the meaning of 'Secretary General' see PARA 477 note 12.

3 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 43: see PARA 513.

4 Ie pursuant to the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18(1)(a), (c): see PARA 493 heads (1), (3).

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 46(1).

6 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 46(1).

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 46(2).

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517. Revision and amendment.

A conference for the purpose of revising or amending the Convention¹ may be convened by the Organisation².

The Secretary General³ must convene a conference of the states parties⁴ to the Convention for revising or amending the Convention, at the request of six states parties or one-third of the states parties, whichever is the higher figure⁵.

Any consent to be bound by the Convention expressed after the date of entry into force of an amendment to the Convention is deemed to apply to the Convention as amended⁶.

1 As to the meaning of 'Convention' see PARA 472.

2 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 47(1). As to the meaning of 'Organisation' see PARA 477 note 12.

3 As to the meaning of 'Secretary General' see PARA 477 note 12.

4 As to signature etc of the Convention see PARA 515.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 47(2).

6 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 47(3).

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518. Amendment of the limits of liability.

The special procedure in these provisions applies¹ solely for the purposes of amending the limits of liability² for compensation³.

Upon the request of at least one-half, but in no case less than six, of the states parties⁴, any proposal to amend those limits must be circulated by the Secretary General⁵ to all members of the Organisation⁶ and to all contracting states⁷.

Any amendment so proposed and circulated must be submitted to the Legal Committee of the Organisation (the 'Legal Committee') for consideration at a date at least six months after the date of its circulation⁸.

All contracting states, whether or not members of the Organisation, are entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments⁹.

Amendments must be adopted by a two-thirds' majority of the contracting states present and voting in the Legal Committee¹⁰ on condition that at least one-half of the contracting states must be present at the time of voting¹¹.

When acting on a proposal to amend the limits, the Legal Committee must take into account the experience of incidents¹² and, in particular, the amount of damage¹³ resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance¹⁴. It must also take into account the relationship between the established¹⁵ limits¹⁶.

No amendment of the limits under these provisions may be considered less than five years from the date the Convention was opened for signature¹⁷ nor less than five years from the date of entry into force of a previous amendment under these provisions¹⁸.

No limit may be increased:

1028 (1) so as to exceed an amount which corresponds to a limit laid down in the Convention increased by 6 per cent per year calculated on a compound basis from the date on which the Convention was opened for signature¹⁹;

1029 (2) so as to exceed an amount which corresponds to a limit laid down in the Convention multiplied by three²⁰.

Any amendment adopted in accordance with the above provisions²¹ must be notified by the Organisation to all contracting states; the amendment is deemed to have been accepted at the end of a period of 18 months after the date of notification, unless within that period no less than one-fourth of the states which were contracting states at the time of the adoption of the amendment have communicated to the Secretary General that they do not accept the amendment, in which case the amendment is rejected and has no effect²². An amendment deemed to have been so accepted enters into force 18 months after its acceptance²³.

All contracting states are bound by the amendment, unless they denounce the Convention²⁴ at least six months before the amendment enters into force; and such denunciation takes effect when the amendment enters into force²⁵.

When an amendment has been adopted but the 18-month period for its acceptance has not yet expired, a state which becomes a contracting state during that period is bound by the

amendment if it enters into force²⁶. A state which becomes a contracting state after that period is bound by an amendment which has been duly²⁷ accepted²⁸. In such cases²⁹ a state becomes bound by an amendment when that amendment enters into force, or when the Convention enters into force for that state, if later³⁰.

1 Ie without prejudice to the provisions of the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 47: see PARA 517.

2 Ie the limits set out in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(1) (see PARA 482) and art 14(5) (see PARA 488).

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(1).

4 As to signature etc of the Convention see PARA 515.

5 As to the meaning of 'Secretary General' see PARA 477 note 12.

6 As to the meaning of 'Organisation' see PARA 477 note 12.

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(2).

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(3).

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(4).

10 Ie expanded as provided in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(4).

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(5).

12 As to the meaning of 'incident' see PARA 474 note 6.

13 As to the meaning of 'damage' see PARA 475.

14 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(6).

15 Ie the limits established in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 9(1) and those in art 14(5).

16 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(6).

17 As to the date of opening for signature see PARA 515.

18 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(7)(a).

19 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(7)(b).

20 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(7)(c).

21 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(5).

22 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(8).

23 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(9).

24 It is in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 49(1), (2): see PARA 519.

25 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(10).

26 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(11).

27 It is accepted in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(8).

28 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(11).

29 It is in the cases referred to in the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(11).

30 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(11).

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519. Denunciation.

The Convention¹ may be denounced by any state party² at any time after the date on which it enters into force for that state party³.

Denunciation must be effected by the deposit of an instrument of denunciation with the Secretary General⁴.

Denunciation takes effect 12 months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary General⁵.

Notwithstanding such a denunciation by a state party, any provisions of the Convention relating to obligations to make contributions⁶ in respect of such payments of compensation as the Assembly⁷ may decide relating to an incident which occurs before the denunciation takes effect continue to apply⁸.

1 As to the meaning of 'Convention' see PARA 472.

2 As to signature etc of the Convention see PARA 515.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 49(1).

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 49(2). As to the meaning of 'Secretary General' see PARA 477 note 12.

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 49(3).

6 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18 (see PARA 493), art 19 (see PARA 494) or art 21(5) (see PARA 496).

7 As to the Assembly see PARAS 499, 500.

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 49(4).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(3) MERCHANT SHIPPING ACT 1995/(viii) Carriage of Hazardous and Noxious Substances/I. SUPPLEMENTAL PROVISIONS/520. Extraordinary sessions of the Assembly.

520. Extraordinary sessions of the Assembly.

Any state party¹ may, within 90 days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining states parties, request the Director² to convene an extraordinary session of the Assembly³. The Director must convene the Assembly to meet not less than 60 days after receipt of the request⁴.

The Director may take the initiative to convene an extraordinary session of the Assembly to meet within 60 days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining states parties⁵.

If the Assembly, at an extraordinary session, convened in accordance with the above provisions⁶ decides that the denunciation will result in a significant increase in the level of contributions from the remaining states parties, any such state may, not later than 120 days before the date on which the denunciation takes effect, denounce the Convention⁷ with effect from the same date⁸.

1 As to signature etc of the Convention see PARA 515.

2 As to the meaning of 'Director' see PARA 478 note 11.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 50(1). As to the Assembly see PARAS 499, 500.

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 50(1).

5 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 50(2).

6 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 50(1) or (2).

7 As to the meaning of 'Convention' see PARA 472.

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 50(3).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(3) MERCHANT SHIPPING ACT 1995/(viii) Carriage of Hazardous and Noxious Substances/I. SUPPLEMENTAL PROVISIONS/521. Cessation of the Convention.

521. Cessation of the Convention.

The Convention¹ ceases to be in force:

- 1030 (1) on the date when the number of states parties falls below six; or
- 1031 (2) 12 months after the date on which data concerning a previous calendar year were to be communicated to the Director², if the data show that the total quantity of contributing cargo³ to the general account⁴ received in the states parties⁵ in that preceding calendar year was less than 30 million tonnes⁶.

Notwithstanding head (2) above, if the total quantity of contributing cargo to the general account⁷ received in the states parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly⁸ may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned 12-month period that the Convention continue to be in force⁹. The Assembly may not, however, take such a decision in more than two subsequent years¹⁰.

States which are bound by the Convention on the day before the date it ceases to be in force must enable the HNS Fund¹¹ to exercise its functions¹² and remain, for that purpose only, bound by the Convention¹³.

1 As to the meaning of 'Convention' see PARA 472.

2 As to signature etc of the Convention see PARA 515.

3 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 21: see PARA 496. As to the meaning of 'contributing cargo' see PARA 478 note 13.

4 As to the meaning of 'Director' see PARA 478 note 11.

5 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 18(1)(a), (c): see PARA 493 heads (1), (3).

6 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 51(1).

7 See note 5.

8 As to the Assembly see PARAS 499, 500.

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 51(1).

10 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 51(1).

11 As to the meaning of 'HNS Fund' see PARA 487.

12 Ie its functions under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 52: see PARA 522.

13 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 51(2).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(3) MERCHANT SHIPPING ACT 1995/(viii) Carriage of Hazardous and Noxious Substances/I. SUPPLEMENTAL PROVISIONS/522. Winding up of the HNS Fund.

522. Winding up of the HNS Fund.

If the Convention¹ ceases to be in force, the HNS Fund² nevertheless:

- 1032 (1) must meet its obligations in respect of any incident³ occurring before the Convention ceased to be in force; and
- 1033 (2) is entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under head (1) above, including expenses for the administration of the HNS Fund necessary for this purpose⁴.

The Assembly⁵ must take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons⁶ who have contributed to the HNS Fund⁷.

For the purposes of the above provisions, the HNS Fund remains a legal person⁸.

1 As to the meaning of 'Convention' see PARA 472.

2 As to the meaning of 'HNS Fund' see PARA 487.

3 As to the meaning of 'incident' see PARA 474 note 6.

4 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 52(1).

5 As to the Assembly see PARAS 499, 500.

6 As to the meaning of 'person' see PARA 474 note 6.

7 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 52(2).

8 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 52(3).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(3) MERCHANT SHIPPING ACT 1995/(viii) Carriage of Hazardous and Noxious Substances/I. SUPPLEMENTAL PROVISIONS/523. Depositary.

523. Depositary.

The Convention¹ and any amendment duly adopted² must be deposited with the Secretary General³.

The Secretary General must:

1034 (1) inform all states which have signed the Convention or acceded thereto, and all members of the Organisation⁴, of:

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- 67. (a) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
- 68. (b) the date of entry into force of the Convention;
- 69. (c) any proposal to amend the limits on the amounts of compensation which has been made⁵;
- 70. (d) any amendment which has been adopted⁶;
- 71. (e) any amendment deemed to have been accepted⁷, together with the date on which that amendment enters into force⁸;
- 72. (f) the deposit of any instrument of denunciation of the Convention together with the date on which it is received and the date on which the denunciation takes effect; and
- 73. (g) any communication called for by any provision in the Convention; and

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1035 (2) transmit certified true copies of the Convention to all states which have signed the Convention or acceded thereto⁹.

As soon as the Convention enters into force, a certified true copy thereof must be transmitted¹⁰ by the depositary to the Secretary General of the United Nations¹¹.

1 As to the meaning of 'Convention' see PARA 472.

2 Ie any amendment adopted under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48: see PARA 518.

3 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 53(1). As to the meaning of 'Secretary General' see PARA 477 note 12.

4 As to the meaning of 'Organisation' see PARA 477 note 12.

5 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(2): see PARA 518.

6 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(5): see PARA 518.

7 Ie under the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(8): see PARA 518.

8 Ie in accordance with the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 48(9), (10): see PARA 518.

9 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 53(2).

10 le in accordance with the Charter of the United Nations (San Francisco, 26 June 1945; TS 67 (1946); Cmd 7015) art 102: see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 105.

11 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 53(3).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(3) MERCHANT SHIPPING ACT 1995/(viii) Carriage of Hazardous and Noxious Substances/I. SUPPLEMENTAL PROVISIONS/524. Languages.

524. Languages.

The Convention¹ is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic².

1 As to the meaning of 'Convention' see PARA 472.

2 Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 art 54.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(4) DEPOSITS IN THE SEA/(i) Licensing/A. REQUIREMENTS OF LICENCES/525. Deposit of substances and articles in the sea etc.

(4) DEPOSITS IN THE SEA

(i) Licensing

A. REQUIREMENTS OF LICENCES

525. Deposit of substances and articles in the sea etc.

A licence¹ is needed²:

1036 (1) for the deposit of substances or articles within United Kingdom waters³ or United Kingdom controlled waters⁴, either in the sea⁵ or under the sea bed:

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- 74. (a) from a vehicle, vessel⁶, aircraft, hovercraft or marine structure⁷;
- 75. (b) from a container floating in the sea; or
- 76. (c) from a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;

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1037 (2) for the deposit of substances or articles anywhere in the sea or under the sea bed:

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- 77. (a) from a British vessel⁸, British aircraft⁹, British hovercraft¹⁰ or British marine structure¹¹; or
- 78. (b) from a container floating in the sea, if the deposit is controlled from a British vessel, British aircraft, British hovercraft or British marine structure;

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1038 (3) for the scuttling of vessels:

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- 79. (a) in United Kingdom waters or United Kingdom controlled waters; or
- 80. (b) anywhere at sea, if the scuttling is controlled from a British vessel, British aircraft, British hovercraft or British marine structure; or

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1039 (4) for the loading of a vessel, aircraft, hovercraft, marine structure or floating container in the United Kingdom or United Kingdom waters with substances or articles for deposit anywhere in the sea or under the sea bed;

1040 (5) for the loading of a vehicle in the United Kingdom with substances or articles for deposit from that vehicle as mentioned in head (1) above; and

1041 (6) for the towing or propelling from the United Kingdom or United Kingdom waters of a vessel for scuttling anywhere at sea¹².

¹ For these purposes, 'licence' means a licence under the Food and Environment Protection Act 1985 Pt II (ss 5-15) (see also PARA 526 et seq): s 24(1).

² ie subject to the provisions of the Food and Environment Protection Act 1985 ss 6-15: see PARA 526 et seq.

³ For these purposes, 'United Kingdom waters' means any part of the sea within the seaward limits of United Kingdom territorial waters: Food and Environment Protection Act 1985 s 24(1). As to the meaning of 'sea' see

note 5. As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

In relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea, any competent authority having functions relevant to marine conservation under the Food and Environment Protection Act 1985 Pt 2 (ss 5-15) must exercise those functions so as to secure compliance with the requirements of EEC Council Directive 79/409 (OJ L103, 25.4.79, p 1) on the conservation of wild birds and EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) on the conservation of natural habitats and of wild flora and fauna (see PARA 54): see the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 6.

4 For these purposes, 'United Kingdom controlled waters' means any part of the sea within the limits of an area designated under the Continental Shelf Act 1964 s 1(7) (see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 172): Food and Environment Protection Act 1985 s 24(1) (definition amended by the Environmental Protection Act 1990 s 146(1), (7)).

5 For these purposes, 'sea' includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river: Food and Environment Protection Act 1990 s 24(1).

6 For these purposes, 'vessel' has the meaning assigned to 'ship' by the Merchant Shipping Act 1995 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229): Food and Environment Protection Act 1985 s 24(1) (definition amended by the Merchant Shipping Act 1995 Sch 13 para 75(b)).

7 For these purposes, 'marine structure' means a platform or other man-made structure at sea, other than a pipe-line: Food and Environment Protection Act 1985 s 24(1).

8 For these purposes, 'British vessel' means a vessel registered in the United Kingdom or a vessel exempted from such registration under the Merchant Shipping Act 1995: Food and Environment Protection Act 1985 s 24(1) (definition amended by the Merchant Shipping Act 1995 Sch 13 para 75(a)). As to registration of ships see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 254.

9 For these purposes, 'British aircraft' means an aircraft registered in the United Kingdom: Food and Environment Protection Act 1985 s 24(1).

10 For these purposes, 'British hovercraft' means a hovercraft registered in the United Kingdom: Food and Environment Protection Act 1985 s 24(1).

11 For these purposes, 'British marine structure' means a marine structure owned by or leased to an individual residing in or a body corporate incorporated under the law of any part of the United Kingdom: Food and Environment Protection Act 1985 s 24(1).

12 Food and Environment Protection Act 1985 s 5 (amended by the Environmental Protection Act 1990 s 146(1), (2), Sch 16 Pt VIII; and the Statute Law (Repeals) Act 1993 Sch 1 Pt II). As from a day to be appointed, the Food and Environment Protection Act 1985 s 5 is further amended by the replacement of references to the United Kingdom and United Kingdom waters by references to Scotland and/or 'the Scottish inshore region' and a number of paragraphs are removed (see s 5(b), (e)(ii)): s 5 (prospectively amended by the Marine and Coastal Access Act 2009 Sch 8 Pt 1 para 2, Sch 22 Pt 2). At the date at which this volume states the law no such day had been appointed.

As to the duty of each licensing authority to maintain registers of licences issued by them see PARA 551 et seq.

As to the application of the Conservation of Habitats and Species Regulations 2010, SI 2010/490, regs 61, 62 ('the assessment provisions') to the granting of a licence, consent or other approval for marine works (the latter expression including any activity requiring a licence under the Food and Environment Protection Act 1985 Pt II (ss 5-15)), see the Conservation of Habitats and Species Regulations 2010, SI 2010/490, reg 100; and **OPEN SPACES AND COUNTRYSIDE**.

UPDATE

525 Deposit of substances and articles in the sea etc

NOTES 3, 4--Definitions of 'United Kingdom waters' and 'United Kingdom controlled waters' in Food and Environment Protection Act 1985 s 24(1) repealed: Marine and Coastal Access Act 2009 Sch 8 para 2(9), Sch 22 Pt 2 (not yet in force).

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526. Incineration at sea etc.

A licence¹ is needed²:

1042 (1) for the incineration³ of substances or articles on a vessel⁴ or marine structure⁵:

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- 81. (a) in United Kingdom waters⁶ or United Kingdom controlled waters⁷; or
- 82. (b) anywhere at sea⁸, if the incineration takes place on a British vessel⁹ or British marine structure¹⁰;

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1043 (2) for the loading of a vessel or marine structure in the United Kingdom or United Kingdom waters with substances or articles for incineration anywhere at sea¹¹.

1 As to the meaning of 'licence' see PARA 525 note 1.

2 le subject to the provisions of the Food and Environment Protection Act 1985 ss 7-15: see PARA 527 et seq.

3 For these purposes, 'incineration' means any combustion of substances and materials for the purpose of their thermal destruction: Food and Environment Protection Act 1985 ss 6(2), 24(1).

4 As to the meaning of 'vessel' see PARA 525 note 6.

5 As to the meaning of 'marine structure' see PARA 525 note 7.

6 As to the meaning of 'United Kingdom waters' see PARA 525 note 3.

7 As to the meaning of 'United Kingdom controlled waters' see PARA 525 note 4.

8 As to the meaning of 'sea' see PARA 525 note 5.

9 As to the meaning of 'British vessel' see PARA 525 note 8.

10 As to the meaning of 'British marine structure' see PARA 525 note 11.

11 Food and Environment Protection Act 1985 s 6(1) (amended by the Environmental Protection Act 1990 s 146(1), (3), Sch 16 Pt VIII). As from a day to be appointed, the Food and Environment Protection Act 1985 s 6 is further amended by the replacement of references to the United Kingdom and United Kingdom waters by references to Scotland and/or 'the Scottish inshore region' and a number of paragraphs are removed (see s 6(1) (a)(ii)): s 6 (prospectively amended by the Marine and Coastal Access Act 2009 Sch 8 Pt 1 para 2, Sch 22 Pt 2). At the date at which this volume states the law no such day had been appointed.

As to the duty of each licensing authority to maintain registers of licences issued by them see PARA 551 et seq.

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B. EXEMPTIONS

527. Power to make exemptions.

A licensing authority¹ may jointly by order made by statutory instrument specify operations which are not to need a licence² or which are not to need a licence if they satisfy conditions specified in the order³.

The conditions that such an order may specify include conditions enabling a licensing authority to require a person to obtain the authority's approval before he does anything for which a licence would be needed but for the order⁴. Such approval may be without conditions or subject to such conditions as the authority considers appropriate⁵.

A licensing authority (1) must consult the Food Standards Agency⁶ as to any order the authority contemplates making⁷; and (2) must from time to time consult that Agency as to the general approach to be taken by the authority in relation to the granting of approvals and the imposition of conditions⁸ (including the identification of circumstances in which it may be desirable for the Agency to be consulted in relation to particular cases)⁹.

A statutory instrument containing an order under the above provisions is subject to annulment in pursuance of a resolution of either House of Parliament¹⁰.

1 For these purposes, 'licensing authority' means in relation to England and Wales whichever of the Ministers is responsible for fisheries in the place where an operation to which a licence would relate would be carried out or commenced: Food and Environment Protection Act 1985 s 24(1) (definition substituted by SI 1999/1756). For these purposes, the 'Ministers' means the Minister of Agriculture, Fisheries and Food (no longer in existence: see PARA 58 note 1) and the Secretary of State: Food and Environment Protection Act 1985 s 24(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'licence' see PARA 525 note 1.

3 Food and Environment Protection Act 1985 s 7(1). In exercise of the power so conferred the Minister of Agriculture, Fisheries and Food and the Secretary of State (but see also note 1), acting jointly, made the Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699 (amended by SI 1994/1056; SI 2002/1355; SI 2005/2055; SI 2007/3538; and SI 2010/304) (see PARAS 528-530) which came into operation on 1 January 1986 (Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 1(1)) but does not apply to Northern Ireland or to United Kingdom waters adjacent to Northern Ireland (art 2). As to the making of orders see PARA 570.

Nothing in the Food and Environment Protection Act 1985 Pt II (ss 5-15) applies to anything done (1) for the purpose of constructing or maintaining a pipeline as respects any part of which an authorisation (within the meaning of the Petroleum Act 1998 Pt III (ss 14-28) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1740 et seq) is in force; or (2) for the purpose of establishing or maintaining an offshore installation within the meaning of Pt IV (ss 29-45) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1729 et seq): Food and Environment Protection Act 1985 s 7A(1) (s 7A added by the Petroleum Act 1998 Sch 4 para 20, and the Food and Environment Protection Act 1985 s 7A(1) renumbered as such and s 7A(2)-(5) added by the Energy Act 2008 Sch 1 paras 1, 2(b)). Nothing in the Food and Environment Protection Act 1985 Pt II applies to anything done in the course of carrying on an activity for which a licence under the Energy Act 2008 s 4 or s 8 (gas unloading, storage and recovery, and carbon dioxide storage) (see **FUEL AND ENERGY**) is required: Food and Environment Protection Act 1985 s 7A(2) (as so added). For this purpose, activities are to be regarded as activities for which such a licence is required if, by virtue of such a licence, they are activities which may be carried on only with the consent of the Secretary of State or another person: s 7A(3) (as so added). Section 7A(2) does not apply in relation to anything done in the course of carrying out an activity for which a licence the Energy Act 2008 s 4 is required in, under or over (a) the territorial sea adjacent to Scotland, Wales or Northern Ireland; or (b) waters in

a Gas Importation and Storage Zone which are United Kingdom controlled waters adjacent to Scotland: Food and Environment Protection Act 1985 s 7A(4) (as so added). Section 7A(2) does not apply in relation to anything done in, under or over the territorial sea adjacent to Wales or Northern Ireland in the course of carrying on an activity for which a licence under the Energy Act 2008 s 18 (see **FUEL AND ENERGY**) is required: Food and Environment Protection Act 1985 s 7A(5) (as so added). As from a day to be appointed, s 7A is further amended by the replacement of s 7A(4)(a), (b) by a reference to 'the Scottish inshore region' and the removal of s 7A(5): s 7A (prospectively amended by the Marine and Coastal Access Act 2009 Sch 8 Pt 1 para 2, Sch 22 Pt 2). At the date at which this volume states the law no such day had been appointed.

4 Food and Environment Protection Act 1985 s 7(2).

5 Food and Environment Protection Act 1985 s 7(3).

6 As to the Food Standards Agency see **FOOD** vol 18(2) (Reissue) PARA 225.

7 le under the Food and Environment Protection Act 1985 s 7.

8 le under the Food and Environment Protection Act 1985 s 7(2), (3).

9 Food and Environment Protection Act 1985 s 7(3A) (added by the Food Standards Act 1999 Sch 3 Pt III para 16(3)).

10 Food and Environment Protection Act 1985 s 7(4).

UPDATE

527 Power to make exemptions

NOTE 1--Definition of 'licensing authority' in Food and Environment Protection Act 1985 s 24(1) amended: Marine and Coastal Access Act 2009 Sch 8 para 2(9), Sch 22 Pt 2 (not yet in force).

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528. Exempt operations.

A licence¹ is not needed:

- 1044 (1) for an operation specified in heads (a) to (z) below which satisfies the conditions, if any, specified therein in relation to the operation; or
- 1045 (2) for the loading of a vehicle, vessel, aircraft, hovercraft, marine structure or floating container in the United Kingdom or United Kingdom waters with substances or articles for deposit in the sea or under the sea bed in the course of an operation specified in heads (a) to (z) below which satisfies the conditions, if any, specified therein².

The operations not needing a licence are:

- 1046 (a) the deposit from a vessel, hovercraft or marine structure of sewage originating on the vessel, hovercraft or marine structure³;
- 1047 (b) the deposit from, or incineration on, a vessel, hovercraft or marine structure of garbage⁴ originating in or on the vessel, hovercraft or marine structure⁵;
- 1048 (c) the deposit from a vessel of cooling water and of ballast water, tank washings or other residues resulting from tank cleaning or tank ballasting after carriage of any substance other than a substance deposited or incinerated in pursuance of a licence⁶;
- 1049 (d) the deposit from a vessel or marine structure of any oil or mixture containing oil in such manner or in such circumstances as to constitute a discharge of a specified kind⁷;
- 1050 (e) the deposit of cable and associated equipment (otherwise than for the purpose of disposal) in the course of cable laying or cable maintenance, other than the deposit (in the coursing of its laying) of a cable transmitting a charge of 132 kilovolts or more, and associated equipment, for the purpose of transmitting electricity from a generating station constructed on the sea bed⁸;
- 1051 (f) the deposit of any substances from a vessel, vehicle, aircraft, hovercraft or marine structure for the purpose of fighting any fire or preventing the spread of any fire⁹;
- 1052 (g) the deposit of fishing gear, whether fixed or not, otherwise than for the purpose of disposal¹⁰;
- 1053 (h) the deposit, by way of return to the sea, of fish or shellfish or parts thereof in the course of fishing operations or fish processing at sea¹¹;
- 1054 (i) the deposit, by way of return to the sea, by a fishing vessel of any article, other than a fish or shellfish, taken from the sea by the vessel in the course of normal fishing operations¹²;
- 1055 (j) the deposit of any substance or article, otherwise than for the purpose of disposal, in the course of, for the purpose of, or in connection with, the propagation or cultivation of fish or shellfish¹³;

- 1056 (k) the deposit, by way of return to the sea, of any substance or article dredged from the sea bed in connection with the propagation or cultivation of shellfish¹⁴;
- 1057 (l) the deposit from a vessel, hovercraft or marine structure of any substance or article, other than bulky waste, in the course of the normal navigation or maintenance thereof¹⁵;
- 1058 (m) the deposit of any substance or article, otherwise than for the purpose of disposal, in the course of salvage operations¹⁶;
- 1059 (n) the deposit on the site of drilling for, or production of, oil or gas or any drill cuttings or drilling muds in the course of such drilling or production¹⁷;
- 1060 (o) the deposit under the sea bed on the site of drilling for, or production of, oil or gas of any substance or article in the course of such drilling or operation¹⁸;
- 1061 (p) the deposit for which a permit is required under the Offshore Chemicals Regulations 2002¹⁹, or for which a permit would be required under those Regulations²⁰;
- 1062 (q) the incineration of hydrocarbons resulting from the exploration for, or production of, oil or gas²¹;
- 1063 (r) the deposit on the site of dredging for aggregates or other minerals of any substance or article taken from the sea in the course of such dredging²²;
- 1064 (s) the deposit in the normal course of operation of a dredging vessel of waters overflowing from the hold of the vessel²³;
- 1065 (t) the deposit of any article in connection with the provision of moorings or aids to navigation by a harbour authority or lighthouse authority or by any other person, if the consent of a harbour authority or lighthouse authority is required²⁴;
- 1066 (u) the deposit of any article or substance in the maintenance of harbour, coast protection, other than beach replenishment, drainage or flood control works, if made on the site of the works²⁵;
- 1067 (v) the deposit for the purpose of treating oil on the surface of the sea of any substance produced for that purpose subject to the conditions that the substance is a substance the use of which is for the time being approved by the licensing authority, that the substance is used in accordance with any conditions to which the approval was subject and that no deposit is made in an area of the sea of a depth of less than 20 metres or within one mile of any such area save with the approval of the licensing authority²⁶;
- 1068 (w) the deposit of any equipment for the purpose of controlling, containing or recovering oil, mixtures containing oil, flotsam or algal blooms on or near to the surface of the sea²⁷;
- 1069 (x) the deposit of any scientific instrument or associated equipment, otherwise than for the purpose of disposal, in connection with scientific experiment or survey²⁸;
- 1070 (y) the launching of vessels or marine structures²⁹;
- 1071 (z) the deposit under the sea bed of any substance or article, otherwise than for the purpose of disposal, in connection with the construction or operation of a bored tunnel subject to the conditions that notice of intention to construct the tunnel is first given to the licensing authority, and that the approval of the licensing authority is first obtained to the doing of anything which might disturb the marine environment or the living resources which it supports³⁰.

1 For these purposes, 'licence' means a licence under the Food and Environment Protection Act 1985 Pt II (ss 5-15) (see PARAS 525-527, 531 et seq): Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 1(2).

2 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 3 (amended by SI 1994/1056). The Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 3 is subject to art 4 (see PARA 529): art 3 (as so amended).

- 3 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 3, Schedule para 1.
- 4 For these purposes, 'garbage' means any kind of victual or domestic waste, but does not include any bulky or industrial waste: Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 2.
- 5 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 2.
- 6 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 3.
- 7 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 4 (amended by SI 2005/2055). The kinds of discharge so specified are discharges for the time being regulated under the Merchant Shipping Act 1995 s 128 (see PARA 360) or discharges of a kind regulated under the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055: see the Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 4 (as so amended).
- 8 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 5 (amended by SI 2010/304).
- 9 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 6.
- 10 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 7.
- 11 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 8.
- 12 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 9.
- 13 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 10.
- 14 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 11.
- 15 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 12.
- 16 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 13.
- 17 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 14 (amended by SI 2005/2055).
- 18 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 15.
- 19 Ie the Offshore Chemicals Regulations 2002, SI 2002/1355.
- 20 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 15A (added by SI 2002/1355). The reference is to a permit that would be required but for the provisions of the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 3(2) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1704), or the fact that the deposit (being a deposit made on or after the day on which those Regulations came into force) was made before the prescribed date within the meaning of those Regulations (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1704 note 1): see the Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 15A (as so added).
- 21 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 16.
- 22 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 17.
- 23 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 18.
- 24 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 19.
- 25 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 20.
- 26 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 21.
- 27 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 22.
- 28 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 23.
- 29 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 24.
- 30 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, Schedule para 25.

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529. Exemptions involving waste.

The provisions relating to exempt operations¹ apply to an establishment or undertaking in relation to an exempt operation² involving the recovery³ or disposal⁴ of waste⁵ if:

- 1072 (1) it is carrying out its own waste disposal at the place of production or waste recovery; and
- 1073 (2) the type and quantity of waste involved, and the method of disposal or recovery, are consistent with the need to attain the objective of ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and in particular without risk to water, air, soil, plants or animals or causing nuisance through noise or odours or adversely affecting the countryside or places of special interest⁶.

1 le the Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 3: see PARA 528.

2 le an operation specified in the Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 3, Schedule: see PARA 528 heads (a)-(z).

3 For these purposes, 'recovery' has the meaning given by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 663 note 1): Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 4(2) (art 4 added by SI 1994/1056; and the Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 2 amended by SI 2007/3538).

4 For these purposes, 'disposal' has the meaning given by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 663 note 1): Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 4(2) (as added and amended: see note 3).

5 For these purposes, 'waste' has the meaning given by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 663 note 1): Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 4(2) (as added and amended: see note 3).

6 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 4(1) (as added: see note 3).

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530. Registration of establishments and undertakings carrying on exempt operations.

It is an offence for an establishment or undertaking to carry on, after 31 December 1994, an exempt activity¹ without being registered with the licensing authority²; and a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale³.

It is the duty of each licensing authority to establish and maintain a register for the above purposes of establishments and undertakings carrying on exempt activities in the area for which it is the licensing authority⁴.

The register must contain the following particulars in relation to each such establishment or undertaking:

- 1074 (1) the name and address of the establishment or undertaking;
- 1075 (2) the activity which constitutes the exempt activity; and
- 1076 (3) the place where the activity is carried on⁵.

The licensing authority must enter those particulars in the register in relation to an establishment or undertaking if it receives notice of them in writing or otherwise becomes aware of those particulars⁶.

Each licensing authority must secure that any register maintained by the authority under the above provisions is available, at all reasonable times, for inspection by the public free of charge and must afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges⁷.

Registers under the above provisions may be kept in any form⁸.

1 For these purposes, 'exempt activity' means any operation specified in the Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 3, Schedule (see PARA 528 heads (a)-(z)): art 5(8) (art 5 added by SI 1994/1056).

2 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 5(1) (as added: see note 1). As to the meaning of 'licensing authority' see PARA 527 note 1.

3 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 5(5) (as added: see note 1).

4 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 5(2) (as added: see note 1).

5 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 5(3) (as added: see note 1).

6 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 5(4) (as added: see note 1).

7 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 5(6) (as added: see note 1).

8 Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 5(7) (as added: see note 1).

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C. ISSUE ETC OF LICENCES

531. Issue of licences.

In determining whether to issue a licence¹, a licensing authority²:

- 1077 (1) must have regard to the need to protect the marine environment, the living resources which it supports and human health and to prevent interference with legitimate uses of the sea³; and
- 1078 (2) may have regard to such other matters as the authority considers relevant⁴.

Where it appears to a licensing authority that an applicant for a licence has applied for the licence with a view to the disposal of the substances or articles to which it would relate, the authority, in determining whether to issue a licence, must have regard⁵ to the practical availability of any alternative methods of dealing with them⁶.

A licensing authority:

- 1079 (a) must include such provisions in a licence as appear to the authority to be necessary or expedient to protect the marine environment, the living resources which it supports and human health and to prevent interference with legitimate uses of the sea; and
- 1080 (b) may include in a licence such other provisions as the authority considers appropriate⁷.

A licensing authority may include⁸:

- 1081 (i) in any licence provisions requiring that no operation authorised by the licence be carried out until the licensing authority has given such further consent to or approval of the operation as the licence may specify and that automatic equipment be used for recording such information relating to any operation of deposit, scuttling or incineration mentioned in the licence as the licensing authority may specify; and
- 1082 (ii) in a licence which only authorises specified operations⁹ provisions requiring that any operation of deposit, scuttling or incineration which is mentioned in it take place at a specified site, whether in United Kingdom waters¹⁰ or not¹¹.

A licensing authority may require an applicant for a licence to supply such information and permit such examination and tests as in the opinion of the authority may be necessary or expedient to enable the authority to decide whether a licence should be issued to the applicant and the provisions which any licence that is issued to him ought to contain¹².

The matters to which a licensing authority is to have regard in exercising powers under the above provisions¹³ include any advice or information given to that authority by the Food Standards Agency (whether of a general nature or in relation to the exercise of a power in a

particular case)¹⁴. A licensing authority must from time to time consult the Food Standards Agency as to the general manner in which the authority proposes to exercise these powers in cases involving any matter which may affect food safety or other interests of consumers in relation to food (including the identification of circumstances in which it may be desirable for the Agency to be consulted in relation to particular cases)¹⁵.

- 1 As to the meaning of 'licence' see PARA 525 note 1.
- 2 As to the meaning of 'licensing authority' see PARA 527 note 1.
- 3 As to the meaning of 'sea' see PARA 525 note 5.
- 4 Food and Environment Protection Act 1985 s 8(1). As from a day to be appointed, the Food and Environment Protection Act 1985 s 8A (about certain electronic communications licences issued by Scottish ministers) is added: s 8A (prospectively added by the Marine and Coastal Access Act 2009 Sch 8 Pt 1 para 2). At the date at which this volume states the law no such day had been appointed.
- 5 Ie without prejudice to the generality of Food and Environment Protection Act 1985 s 8(1).
- 6 Food and Environment Protection Act 1985 s 8(2).
- 7 Food and Environment Protection Act 1985 s 8(3).
- 8 Ie without prejudice to the generality of the Food and Environment Protection Act 1985 s 8(3).
- 9 Ie operations such as are mentioned in the Food and Environment Protection Act 1985 s 5(f) or (h) (see PARA 525 heads (4), (6)) or s 6(1)(b) (see PARA 526 head (2)).
- 10 As to the meaning of 'United Kingdom waters' see PARA 525 note 3.
- 11 Food and Environment Protection Act 1985 s 8(4). Where automatic recording equipment is used in accordance with a provision included in a licence by virtue of s 8(4)(a) (see head (i) in the text), any record produced by means of the equipment is evidence in any proceedings under Pt II (ss 5-15): see PARA 525 et seq and PARA 532 et seq) of the matters appearing from the record: s 8(6). As from a day to be appointed, s 8(4), is amended by the replacement of the reference to United Kingdom waters by a reference to 'the Scottish inshore region' and s 8(6) is amended by the removal of the word 'evidence' and reference to Scotland: s 8(4), (6) (prospectively amended by the Marine and Coastal Access Act 2009 Sch 8 Pt 1 para 2, Sch 22 Pt 2). At the date at which this volume states the law no such day had been appointed.
- 12 Food and Environment Protection Act 1985 s 8(5).
- 13 Ie under the Food and Environment Protection Act 1985 s 8.
- 14 Food and Environment Protection Act 1985 s 8(11A) (s 8(11A), (11B) added by the Food Standards Act 1999 Sch 3 Pt III para 16(4)). As to the Food Standards Agency see **FOOD** vol 18(2) (Reissue) PARA 225.
- 15 Food and Environment Protection Act 1985 s 8(11B) (as added: see note 14).

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532. Fees.

A licensing authority¹ may require an applicant for a licence², on making his application, to pay a reasonable fee in respect of the administrative expenses of processing his application³.

A licensing authority may also require an applicant for a licence to pay a further reasonable fee towards the expense:

- 1083 (1) of carrying out any examination and tests which in the opinion of the authority are necessary or expedient to enable the authority to decide whether to issue a licence to the applicant and the provisions which any licence issued to him ought to include;
- 1084 (2) of checking the manner in which operations for which a licence is needed have been or are being conducted; and
- 1085 (3) of monitoring the effect of such operations⁴.

Such fees must be determined on principles settled by the Ministers⁵ with the consent of the Treasury and after consultation with organisations appearing to the Ministers to represent persons who are likely to apply for licences⁶.

1 As to the meaning of 'licensing authority' see PARA 527 note 1.

2 As to the meaning of 'licence' see PARA 525 note 1.

3 Food and Environment Protection Act 1985 s 8(7). As to other matters to which the licensing authority must have regard see s 8(11A), (11B); and PARA 531.

4 Food and Environment Protection Act 1985 s 8(8).

5 As to the meaning of 'Ministers' see PARA 527 note 1.

6 Food and Environment Protection Act 1985 s 8(9). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

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533. Variation or revocation of licences.

A licensing authority¹ may vary or revoke a licence² which the authority has issued if it appears to the authority:

- 1086 (1) that there has been a breach of any of its provisions³;
- 1087 (2) that the licence ought to be varied or revoked:

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83. (a) because of a change in circumstances relating to the marine environment, the living resources which it supports or human health;

84. (b) because of increased scientific knowledge relating to any of those matters; or

85. (c) for any other reason that appears to the authority to be relevant⁴.

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1 As to the meaning of 'licensing authority' see PARA 527 note 1.

2 As to the meaning of 'licence' see PARA 525 note 1.

3 Food and Environment Protection Act 1985 s 8(10). As to other matters to which the licensing authority must have regard see s 8(11A), (11B); and PARA 531.

4 Food and Environment Protection Act 1985 s 8(11).

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534. Representations.

If, within 28 days of the issue of a licence¹, the person to whom it is issued requests the licensing authority² to give him notice in writing of the reasons for the inclusion of any provision in it, the authority must comply with his request within 28 days of receiving it³.

If a licensing authority refuses an application for a licence, the authority must give the applicant notice in writing of the reasons for the refusal⁴.

If a licensing authority varies or revokes a licence without the holder's consent, the authority must give the holder notice in writing of the reasons for the variation or revocation⁵.

If, within 28 days of receipt of any such notice giving a licensing authority's reasons, the person to whom it is given makes written representations to the authority concerning the matter to which the notice related, the authority must constitute a committee to consider his representations⁶.

Each licensing authority must draw up and from time to time revise a panel of persons who are specially qualified in the authority's opinion to be members of committees so constituted; and any committee constituted by an authority must be drawn from members of the authority's panel⁷.

If a licensing authority constitutes a committee, the authority must appoint one of the members of the committee to be its chairman⁸.

It is the duty of the chairman:

- 1088 (1) to serve on the person who made the representations a notice requiring him to state within 14 days of receipt of the notice whether he wishes to make oral representations to the committee; and
- 1089 (2) to serve on him, not earlier than the date of the notice under head (1) above, notice of the place, date and time of the meeting of the committee⁹.

A notice under head (2) above must not specify a date for the meeting of the committee earlier than 21 days from the date of the notice, unless the person who made the representations has agreed to an earlier meeting¹⁰.

If he expresses a wish to make oral representations, the committee must afford him an opportunity to do so, either in person or by any person authorised by him in that behalf¹¹.

The committee must consider:

- 1090 (a) the reasons given by the authority under these provisions; and
- 1091 (b) any representations made;

and must make a report to the licensing authority after the close of its consideration, giving its findings of fact and its recommendations; and the licensing authority must reconsider the decision of the authority to which the representations relate in the light of the report¹².

The licensing authority must notify the person who made the representations of the result of the authority's reconsideration and the reasons for it and must send him a copy of the committee's report¹³.

A licensing authority may pay to a person who makes representations such sum as the authority considers appropriate in respect of costs or expenses incurred by that person in connection with the making of the representations and of any hearing relating to them by a committee¹⁴; but no payment must be made in a case where the result of the reconsideration is that the authority confirms the original decision without modification¹⁵.

A licensing authority may make arrangements for securing that such of the authority's officers as the authority considers are required are available to assist a committee constituted by the authority under the above provisions¹⁶.

A licensing authority may pay such fees and allowances for members of such committees and such other expenses of such committees as the authority may with the consent of the Treasury determine¹⁷.

1 As to the meaning of 'licence' see PARA 525 note 1.

2 As to the meaning of 'licensing authority' see PARA 527 note 1.

3 Food and Environment Protection Act 1985 s 8(12), Sch 3 para 1. On issuing a licence to a person a licensing authority must notify him of the effect of Sch 3 para 1: Sch 3 para 2.

4 Food and Environment Protection Act 1985 Sch 3 para 3.

5 Food and Environment Protection Act 1985 Sch 3 para 4.

6 Food and Environment Protection Act 1985 Sch 3 para 5. A notice under Sch 3 giving a licensing authority's reasons must state the effect of Sch 3 para 5: Sch 3 para 6.

7 Food and Environment Protection Act 1985 Sch 3 para 7.

8 Food and Environment Protection Act 1985 Sch 3 para 8.

9 Food and Environment Protection Act 1985 Sch 3 para 9.

10 Food and Environment Protection Act 1985 Sch 3 para 10.

11 Food and Environment Protection Act 1985 Sch 3 para 11.

12 Food and Environment Protection Act 1985 Sch 3 para 12.

13 Food and Environment Protection Act 1985 Sch 3 para 13.

14 Food and Environment Protection Act 1985 Sch 3 para 14.

15 Food and Environment Protection Act 1985 Sch 3 para 15.

16 Food and Environment Protection Act 1985 Sch 3 para 16.

17 Food and Environment Protection Act 1985 Sch 3 para 17. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

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(ii) Offences relating to Licensing System etc

535. Doing or causing or permitting anything to be done except in pursuance of a licence.

A person who:

- 1092 (1) except in pursuance of a licence¹ and in accordance with its provisions, does anything for which a licence is needed; or
- 1093 (2) causes or permits any other person to do any such thing except in pursuance of a licence and in accordance with its provisions,

is guilty of an offence and liable to imprisonment, a fine or both².

It is a defence for a person charged with an offence under head (1) or (2) above in relation to any operation to prove:

- 1094 (a) that the operation was carried out for the purpose of securing the safety of a vessel³, aircraft, hovercraft or marine structure⁴ or of saving life; and
- 1095 (b) that he took steps within a reasonable time to inform one or other of the Ministers⁵ of the operation, of the locality and circumstances in which it took place and of any substances or articles concerned⁶.

A person does not have the above defence if the court is satisfied:

- 1096 (i) that the operation was not necessary for any purpose mentioned in head (a) above and was not a reasonable step to take in the circumstances; or
- 1097 (ii) that it was necessary for one of those purposes but the necessity was due to the fault of the defendant⁷.

It is a defence for a person charged with an offence under head (1) or (2) above in relation to any operation which is a specified operation⁸ and which was carried out outside United Kingdom controlled waters⁹, and not within United Kingdom waters¹⁰, to prove that the following provisions¹¹ are satisfied in respect of that operation:

- 1098 (A) in respect of the deposit of substances or articles anywhere in the sea or under the sea bed¹², if the vessel, aircraft, hovercraft, marine structure or container, as the case may be, was loaded in a Convention state¹³ or the national or territorial waters of a Convention state with the substances or articles deposited; or
- 1099 (B) in respect of the scuttling of vessels anywhere at sea¹⁴, if the vessel scuttled was towed or propelled from a Convention state or the national or territorial waters of a Convention state to the place where the scuttling was carried out; or
- 1100 (C) in respect of the incineration of substances or articles on a vessel or marine structure anywhere at sea¹⁵, if the vessel or marine structure on which the incineration¹⁶ took place was loaded in a Convention state or the national or

territorial waters of a Convention state with the substances or articles incinerated¹⁷; and
 1101 (D) in respect of an operation, if the operation took place in pursuance of a licence issued by the responsible authority in the Convention state concerned and in accordance with the provisions of that licence¹⁸.

Proceedings for such an offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom¹⁹.

1 As to the meaning of 'licence' see PARA 525 note 1.

2 Food and Environment Protection Act 1985 ss 9(1), 21(2A) (s 21(2A) added by the Environmental Protection Act 1990 s 146(1), (6)). As from a day to be appointed, the Food and Environment Protection Act 1985 s 9(1) is amended, s 9(5)-(7) is removed and s 9(8) is added: s 9 (prospectively amended by the Marine and Coastal Access Act 2009 Sch 8 Pt 1 paras 2, 5, Sch 22 Pt 2). At the date at which this volume states the law no such day had been appointed.

Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding £50,000: see the Food and Environment Protection Act 1985 s 21(2A) (as so added). As to the general defence of due diligence see PARA 538; and as to offences by bodies corporate see PARA 537.

3 As to the meaning of 'vessel' see PARA 525 note 6.

4 As to the meaning of 'marine structure' see PARA 525 note 7.

5 As to the meaning of 'Ministers' see PARA 527 note 1.

6 Food and Environment Protection Act 1985 s 9(3).

7 Food and Environment Protection Act 1985 s 9(4).

8 Ie an operation which falls within the Food and Environment Protection Act 1985 s 5(b) or (e)(ii) (see PARA 525 heads (2), (3)(b)) or s 6(1)(a)(ii) (see PARA 526 head (1)(b)).

9 As to the meaning of 'United Kingdom controlled waters' see PARA 525 note 4.

10 As to the meaning of 'United Kingdom waters' see PARA 525 note 3.

11 Ie the Food and Environment Protection Act 1985 s 9(6) (see heads (A)-(C) in the text) and s 9(7) (see head (D) in the text).

12 Ie an operation falling within the Food and Environment Protection Act 1985 s 5(b): see PARA 525 head (2).

13 For these purposes, 'Convention state' means a state which is a party to the London Convention or the Oslo Convention: Food and Environment Protection Act 1985 s 24(1). 'London Convention' means the Convention for the Prevention of Marine Pollution by the Dumping of Wastes and Other Matter 1972 (London, Mexico City, Moscow and Washington, 29 December 1972 to 31 December 1973; TS 43 (1976); Cmnd 6486): Food and Environment Protection Act 1985 s 24(1). 'Oslo Convention' means the International Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo, 15 February 1972; TS 119 (1975); Cmnd 6228) with Protocol (Oslo, 2 March 1983; Misc 12 (1983); Cmnd 8942): Food and Environment Protection Act 1985 s 24(1). Any reference to the London Convention or the Oslo Convention is a reference to it as it has effect from time to time: Food and Environment Protection Act 1985 s 24(2).

14 Ie an operation falling within the Food and Environment Protection Act 1985 s 5(e)(ii): see PARA 525 head (3)(b).

15 Ie an operation falling within the Food and Environment Protection Act 1985 s 6(1)(a)(ii): see PARA 526 head (1)(b).

16 Food and Environment Protection Act 1985 s 9(5) (amended by the Environmental Protection Act 1990 s 146(1), (4)). See note 2.

17 Food and Environment Protection Act 1985 s 9(6). See note 2.

18 Food and Environment Protection Act 1985 s 9(7). See note 2.

19 Food and Environment Protection Act 1985 s 21(8). Section 21(8) is repealed by the Marine and Coastal Access Act 2009 Sch 8 Pt 1 para 2, Sch 22 Pt 2 from a day to be appointed under s 324. At the date at which this volume states the law no such day had been appointed.

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536. False or reckless statements or failure to disclose material particulars.

A person who, for the purpose of procuring the issue of a licence¹, or in purporting to carry out any duty imposed on him by the provisions of a licence:

- 1102 (1) makes a statement which he knows to be false in a material particular;
- 1103 (2) recklessly makes a statement which is false in a material particular; or
- 1104 (3) intentionally fails to disclose any material particular,

is guilty of an offence and liable to a fine².

Proceedings for such an offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom³.

1 As to the meaning of 'licence' see PARA 525 note 1.

2 Food and Environment Protection Act 1985 ss 9(2), 21(3), (4). Such a person is liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding the statutory maximum: see s 21(3), (4). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to the general defence of due diligence see PARA 538; and as to offences by bodies corporate see PARA 537.

3 Food and Environment Protection Act 1985 s 21(8). As to the meaning of 'United Kingdom' see PARA 1 note 2. Section 21(8) is repealed by the Marine and Coastal Access Act 2009 Sch 8 Pt 1 para 2, Sch 22 Pt 2 from a day to be appointed under s 324. At the date at which this volume states the law no such day had been appointed.

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537. Offences by bodies corporate.

Where an offence under the Food and Environment Protection Act 1985 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly¹.

Where the affairs of a body corporate are managed by its members, the above provisions apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate².

1 Food and Environment Protection Act 1985 s 21(6).

2 Food and Environment Protection Act 1985 s 21(7).

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538. General defence of due diligence.

In any proceedings for an offence under the Food and Environment Protection Act 1985 it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence¹.

A person is to be taken² to have established the defence provided by the above provisions if he proves:

- 1105 (1) that he acted under instructions given to him by his employer; or
- 1106 (2) that he acted in reliance on information supplied by another person without any reason to suppose that the information was false or misleading,

and, in either case, that he took all such steps as were reasonably open to him to ensure that no offence would be committed³.

If in any case the defence so provided involves an allegation that the commission of the offence was due to an act or omission by another person, other than the giving of instructions to the person charged with the offence by his employer, or to reliance on information supplied by another person, the person charged is not entitled, without the leave of the court, to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice giving such information identifying or assisting in the identification of that other person as was then in his possession⁴.

1 Food and Environment Protection Act 1985 s 22(1).

2 ie without prejudice to the generality of the Food and Environment Protection Act 1985 s 22(1).

3 Food and Environment Protection Act 1985 s 22(2).

4 Food and Environment Protection Act 1985 s 22(3).

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539. Power to take remedial action.

A licensing authority¹ may carry out any operation which appears to him to be necessary or expedient for the purpose of protecting the marine environment, the living resources which it supports and human health, or of preventing interference with legitimate use of the sea², in any case where anything for which a licence³ is needed appears to have been carried out otherwise than in pursuance of a licence and in accordance with its provisions⁴.

If a licensing authority carries out such an operation, he may recover any expenses reasonably incurred by him in carrying it out from any person who has been convicted of an offence in consequence of the act or omission which made it appear to the licensing authority to be necessary or expedient to carry out the operation⁵.

1 As to the meaning of 'licensing authority' see PARA 527 note 1.

2 As to the meaning of 'sea' see PARA 525 note 5.

3 As to the meaning of 'licence' see PARA 525 note 1.

4 Food and Environment Protection Act 1985 s 10(1) (amended by SI 1999/1756).

5 Food and Environment Protection Act 1985 s 10(2) (amended by SI 1999/1756).

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(iii) Enforcement

A. OFFICERS AND THEIR POWERS

540. Powers of officers; use of force.

A licensing authority¹ may authorise any person, subject to such limitations as may be specified in the instrument authorising him, to enforce the statutory provisions² relating to deposits in the sea³.

A person so authorised may enter:

- 1107 (1) land and vehicles in the United Kingdom;
- 1108 (2) foreign vessels⁴, foreign aircraft, foreign hovercraft and foreign marine structures⁵ in the United Kingdom or within United Kingdom waters⁶ or United Kingdom controlled waters⁷;
- 1109 (3) British vessels⁸, British aircraft⁹, British hovercraft¹⁰ and British marine structures¹¹, wherever they may be,

if he has reasonable grounds for believing that any substances or articles intended to be deposited in the sea¹² or under the sea bed or incinerated on a vessel or marine structure at sea are or have been present there¹³.

A person so authorised may board any vessel within United Kingdom waters or United Kingdom controlled waters and any British vessel wherever it may be, if it appears to him that it is intended to be scuttled¹⁴.

A person so authorised must not enter premises used only as a dwelling for the purposes of enforcement¹⁵.

An officer¹⁶ may use reasonable force, if necessary, in the performance of his functions¹⁷.

1 As to the meaning of 'licensing authority' see PARA 527 note 1.

2 I.e. the Food and Environment Protection Act 1985 Pt II (ss 5-15): see PARA 525 et seq and PARA 541 et seq.

3 Food and Environment Protection Act 1985 s 11(1) (amended by SI 1999/1756). The Food and Environment Protection Act 1985 s 12 et seq are to be construed, in reference to a person so authorised, as subject to any such limitations: s 11(1).

4 As to the meaning of 'vessel' see PARA 525 note 6.

5 As to the meaning of 'marine structure' see PARA 525 note 7.

6 As to the meaning of 'United Kingdom waters' see PARA 525 note 3.

7 As to the meaning of 'United Kingdom controlled waters' see PARA 525 note 4.

8 As to the meaning of 'British vessel' see PARA 525 note 8.

9 As to the meaning of 'British aircraft' see PARA 525 note 9.

- 10 As to the meaning of 'British hovercraft' see PARA 525 note 10.
- 11 As to the meaning of 'British marine structure' see PARA 525 note 11.
- 12 As to the meaning of 'sea' see PARA 525 note 5.
- 13 Food and Environment Protection Act 1985 s 11(2) (s 11(2), (3) amended by the Environmental Protection Act 1990 s 146(1), (5)). As from a day to be appointed, the Food and Environment Protection Act 1985 s 11(2), (3) is further revised changing references to Scotland and the Scottish inshore region in light of the Marine and Coastal Access Act 2009: Food and Environment Protection Act 1985 s 11(2), (3) (prospectively amended by the Marine and Coastal Access Act 2009 Sch 8 Pt 1 para 2, Sch 22 Pt 2). At the date at which this volume states the law no such day had been appointed.
- 14 Food and Environment Protection Act 1985 s 11(3) (as amended: see note 13). See note 13.
- 15 Food and Environment Protection Act 1985 s 11(4).
- 16 For these purposes, 'officer' means a person authorised to enforce the Food and Environment Protection Act 1985 Pt II (ss 5-15): s 11(5), Sch 2 para 1(c).
- 17 Food and Environment Protection Act 1985 Sch 2 para 8.

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541. Assistants for officers etc.

An officer¹ may take with him, to assist him in performing his functions, any other person and any equipment or materials².

A person whom an officer takes with him may perform any of the officer's functions, but only under the officer's supervision³.

1 As to the meaning of 'officer' see PARA 540 note 16.

2 Food and Environment Protection Act 1985 s 11(5), Sch 2 para 2(1).

3 Food and Environment Protection Act 1985 Sch 2 para 2(2).

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542. Power to question.

In order to perform his functions¹, an officer² may require a person whom he has reasonable cause to believe is able to give information which will assist him in carrying out those functions to answer such questions as the officer thinks it appropriate to ask³, and to sign a declaration of the truth of his answers⁴. The person questioned may nominate a person to be with him when he gives his answers⁵, and only that person⁶ and a person authorised by the officer⁷ may be present when the answers are given. A person cannot refuse to answer such questions on the ground that he or his spouse or his civil partner might be incriminated of an offence, but a statement or admission so made is not admissible in evidence against them in proceedings for any offence⁸.

1 le under the Food and Environment Protection Act 1985 Pt III (ss 16-19).

2 As to the meaning of 'officer' see PARA 540 note 16.

3 Food and Environment Protection Act 1985 Sch 2 para 2A(1)(a) (Sch 2 para 2A added by the Pesticides Act 1998 s 2).

4 Food and Environment Protection Act 1985 Sch 2 para 2A(1)(b) (as added: see note 3).

5 Food and Environment Protection Act 1985 Sch 2 para 2A(2) (as added: see note 3).

6 Food and Environment Protection Act 1985 Sch 2 para 2A(3)(a) (as added: see note 3).

7 Food and Environment Protection Act 1985 Sch 2 para 2A(3)(b) (as added: see note 3).

8 Food and Environment Protection Act 1985 Sch 2 para 2A(4) (as added (see note 3); and amended by the Civil Partnership Act 2004 Sch 27 para 109).

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543. Powers in relation to vessels, aircraft etc.

In order to perform his functions, an officer¹ may require any person:

- 1110 (1) to give details of any substances or articles on board a vessel², aircraft, hovercraft or marine structure³; and
- 1111 (2) to give information concerning any substances or articles lost from a vessel, aircraft, hovercraft or marine structure⁴.

In order to perform any such functions, an officer:

- 1112 (a) may require any vessel, aircraft, hovercraft or marine structure to stop; and
- 1113 (b) may require the attendance of the master⁵, captain⁶ or commander⁷ of a vessel, aircraft or hovercraft, of the person in charge of a marine structure and of any other person who is on board a vessel, aircraft, hovercraft or marine structure;

and may require any person on board to assist him in the performance of his functions⁸.

In order to perform his functions, an officer may:

- 1114 (i) require the master, captain or commander of a vessel, aircraft or hovercraft and the person in charge of a marine structure to take it and its crew to the port which appears to the officer to be the nearest convenient port or may take it there himself⁹;
- 1115 (ii) detain a vessel, aircraft, hovercraft or marine structure¹⁰.

If an officer detains a vessel, aircraft, hovercraft or marine structure, he must serve on the master, captain or person in charge a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an officer¹¹.

1 As to the meaning of 'officer' see PARA 540 note 16.

2 As to the meaning of 'vessel' see PARA 525 note 6.

3 As to the meaning of 'marine structure' see PARA 525 note 7.

4 Food and Environment Protection Act 1985 s 11(5), Sch 2 para 3(1).

5 For these purposes, 'master', in relation to any vessel, includes the person for the time being in charge of the vessel: Food and Environment Protection Act 1985 s 24(1).

6 For these purposes, 'captain', in relation to a hovercraft, means the person who is designated by the operator to be in charge of it during any journey, or, failing such designation, the person who is for the time being lawfully in charge of it: Food and Environment Protection Act 1985 s 24(1).

7 For these purposes, 'commander', in relation to an aircraft, means the member of the flight crew designated as commander of that aircraft by the operator, or, failing such designation, the person who is for the time being the pilot in command of the aircraft: Food and Environment Protection Act 1985 s 24(1).

- 8 Food and Environment Protection Act 1985 Sch 2 para 3(2).
- 9 Food and Environment Protection Act 1985 Sch 2 para 3(3) (amended by the Environment Protection Act 1990 s 146(1), (8)).
- 10 Food and Environment Protection Act 1985 Sch 2 para 3(4).
- 11 Food and Environment Protection Act 1985 Sch 2 para 3(5).

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544. Containers etc.

In order to perform his functions, an officer¹ may:

- 1116 (1) open any container;
- 1117 (2) carry out searches, inspections, measurements and tests;
- 1118 (3) take samples;
- 1119 (4) require the production of documents, books and records; and
- 1120 (5) photograph or copy anything whose production he has power to require under head (4) above².

An officer exercising any power of entry conferred by Part III of the Food and Environment Protection Act 1985³ may photograph anything which he has reasonable cause to believe may be relevant in connection with the exercise of his functions⁴.

1 As to the meaning of 'officer' see PARA 540 note 16.

2 Food and Environment Protection Act 1985 s 11(5), Sch 2 para 4(1) (Sch 2 para 4(1) renumbered as such and Sch 2 para 4(2), (3) added by the Pesticides Act 1998 s 2(3)). The Food and Environment Protection Act 1985 Sch 2 para 4(1) is without prejudice to the officer's powers under any other provision of the Food and Environment Protection Act 1985: see Sch 2 para 4 (as so renumbered).

3 Ie conferred by the Food and Environment Protection Act 1985 Pt III (ss 16-19).

4 Food and Environment Protection Act 1985 Sch 2 para 4(2) (as added: see note 2). The reference is to his functions under Pt III (ss 16-19). Nothing in Sch 2 para 4(2) affects the powers conferred by Sch 2 para 4(1): Sch 2 para 4(3) (as so added).

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545. Evidence of officer's authority.

An officer¹ must be furnished with a certificate of his authorisation²; and, when he proposes to perform any function, it is his duty, if so requested, to produce that certificate³.

It is also his duty, if so requested, to state:

- 1121 (1) his name;
- 1122 (2) the function that he proposes to perform; and
- 1123 (3) his grounds for proposing to perform it⁴.

1 As to the meaning of 'officer' see PARA 540 note 16.

2 For these purposes, the reference to certificates of authorisation are to be construed, in relation to a British sea-fishery officer, as references to his warrant of appointment as a British sea-fishery officer: Food and Environment Protection Act 1985 s 11(5), Sch 2 para 5(3).

3 Food and Environment Protection Act 1985 Sch 2 para 5(1).

4 Food and Environment Protection Act 1985 Sch 2 para 5(2).

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546. Time of performance of functions.

An officer¹ must perform his functions at a reasonable hour unless it appears to the officer that there are grounds for suspecting that the purpose of their performance may be frustrated if he seeks to perform them at a reasonable hour².

1 As to the meaning of 'officer' see PARA 540 note 16.

2 Food and Environment Protection Act 1985 s 11(5), Sch 2 para 6.

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547. Entry into dwellings.

An officer¹ may only enter a dwelling for the purpose of performing his functions if a justice of the peace has issued a warrant authorising him to enter and search that dwelling².

A justice may only issue such a warrant if, on an application made by the officer, he is satisfied:

1124 (1) that the officer has reasonable grounds for believing that there is present
in the dwelling anything to which those functions relate; and

1125 (2) that:

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86. (a) it is not practicable to communicate with any person entitled to grant entry to the dwelling; or

87. (b) a person entitled to grant entry to the dwelling has unreasonably refused an officer entry; or

88. (c) entry to the dwelling is unlikely to be granted unless a warrant is produced; or

89. (d) the purpose of entry may be frustrated or seriously prejudiced unless an officer arriving at the dwelling can secure immediate entry to it³.

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1 As to the meaning of 'officer' see PARA 540 note 16.

2 Food and Environment Protection Act 1985 s 11(5), Sch 2 para 7(1), (3)(a). In relation to England and Wales, the Police and Criminal Evidence Act 1984 ss 15, 16 (safeguards in respect of warrants and the execution of warrants: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 872, 880 et seq) have effect in relation to warrants for officers under the Food and Environment Protection Act 1985 Sch 2 para 7 as they have effect in relation to warrants for constables: Sch 2 para 7(4).

3 Food and Environment Protection Act 1985 Sch 2 para 7(2).

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548. Protection of officers.

An officer¹ is not liable in any civil or criminal proceedings for anything done in the purported performance of his functions if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it².

1 As to the meaning of 'officer' see PARA 540 note 16.

2 Food and Environment Protection Act 1985 s 11(5), Sch 2 para 9.

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549. Offences.

Any person who:

- 1126 (1) intentionally obstructs an officer¹ in the performance of any of his functions;
- 1127 (2) fails without reasonable excuse to comply with a requirement made or direction given by an officer in the performance of his functions; or
- 1128 (3) in purporting to give information required by an officer for the performance of any of his functions, makes a statement which he knows to be false in a material particular, recklessly makes a statement which is false in a material particular or intentionally fails to disclose any material particular,

is guilty of an offence and liable to a fine².

Proceedings for such an offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom³.

1 As to the meaning of 'officer' see PARA 540 note 16.

2 Food and Environment Protection Act 1985 ss 11(5), 21(5), Sch 2 para 10. Such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 21(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

3 Food and Environment Protection Act 1985 s 21(8). As to the meaning of 'United Kingdom' see PARA 1 note 2.

UPDATE

549 Offences

TEXT AND NOTE 3--Food and Environment Protection Act 1985 s 21(8) repealed: Marine and Coastal Access Act 2009 Sch 8 para 2(8), Sch 22 Pt 2 (not yet in force).

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B. ENFORCEMENT OF CONVENTIONS

550. In general.

A licensing authority¹ may jointly by order made by statutory instrument:

- 1129 (1) declare that any procedure which has been developed for the effective application of the London Convention² or the Oslo Convention³ and is specified in the order is an agreed procedure as between Her Majesty's government in the United Kingdom and the government of any Convention state⁴ so specified; and
- 1130 (2) specify any of the powers conferred by the Food and Environment Protection Act 1985 for the purpose of enforcing Part II of that Act⁵ as a power that may be exercised, by such persons, in such circumstances and subject to such conditions or modifications as may be specified, for the purpose of enforcing that procedure⁶.

A person who exercises any powers by virtue of such an order has the same rights and liabilities in relation their exercise that a person authorised under the enforcement provisions⁷ would have in relation to the exercise of any powers for the purpose of enforcing Part II of the 1985 Act⁸.

A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament⁹.

1 As to the meaning of 'licensing authority' see PARA 527 note 1.

2 As to the meaning of 'London Convention' see PARA 535 note 13.

3 As to the meaning of 'Oslo Convention' see PARA 535 note 13.

4 As to the meaning of 'Convention state' see PARA 535 note 13.

5 Ie the Food and Environment Protection Act 1985 Pt II (ss 5-15): see PARA 525 et seq and PARA 551 et seq.

6 Food and Environment Protection Act 1985 s 12(1) (amended by SI 1999/1756). At the date at which this volume states the law no such order had been made.

7 Ie the Food and Environment Protection Act 1985 s 11: see PARA 540 et seq.

8 Food and Environment Protection Act 1985 s 12(2).

9 Food and Environment Protection Act 1985 s 12(3).

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(iv) Public Registers

551. Duty of licensing authority to keep public registers of information.

It is the duty of each licensing authority¹, as respects licences² for which it is the licensing authority, to maintain, in accordance with regulations, a register containing prescribed³ particulars of or relating to:

- 1131 (1) applications for licences made to that authority;
- 1132 (2) the licences issued by that authority;
- 1133 (3) variations of licences effected by that authority;
- 1134 (4) revocations of licences effected by that authority;
- 1135 (5) convictions for offences⁴;
- 1136 (6) information obtained or furnished⁵;
- 1137 (7) the occasions on which either of the Ministers⁶ has carried out any remedial action⁷;
- 1138 (8) such other matters relating to operations for which licences are needed as may be prescribed⁸.

No information must be included in any register which, in the opinion of either of the Ministers, is such that its disclosure on the register:

- 1139 (a) would be contrary to the interests of national security; or
- 1140 (b) would prejudice to an unreasonable degree some person's commercial interests⁹.

Information excluded from a register by virtue of head (b) above is treated as ceasing to prejudice a person's commercial interests at the expiry of the period of four years beginning with the date on which the Minister made his decision; but, on the application of any person to whom it relates, the Minister must decide whether the information should be included or continue to be excluded from the register¹⁰.

Where information of any description is excluded from a register by virtue of head (b) above, a statement must be entered in the register indicating the existence of information of that description¹¹.

It is the duty of each licensing authority:

- 1141 (i) to secure that the register maintained by the authority is available, at all reasonable times, for inspection by the public free of charge; and
- 1142 (ii) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges¹².

Registers under the above provisions may be kept in any form¹³.

Either of the Ministers may exercise any power to make regulations under the above provisions and any such power is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament¹⁴.

1 As to the meaning of 'licensing authority' see PARA 527 note 1.

2 As to the meaning of 'licence' see PARA 525 note 1.

3 For these purposes, 'prescribed' means prescribed in regulations: Food and Environment Protection Act 1985 s 14(7) (s 14 substituted by the Environmental Protection Act 1990 s 147).

4 Ie under the Food and Environment Protection Act 1985 s 9: see PARAS 535, 536.

5 Ie in pursuance of the Food and Environment Protection Act 1985 s 8(3), (4) or (5): see PARA 531.

6 As to the meaning of 'Ministers' see PARA 527 note 1.

7 Ie any operation carried out under the Food and Environment Protection Act 1985 s 10: see PARA 539.

8 Food and Environment Protection Act 1985 s 14(1) (as substituted: see note 3).

9 Food and Environment Protection Act 1985 s 14(2) (as substituted: see note 3).

10 Food and Environment Protection Act 1985 s 14(3) (as substituted: see note 3).

11 Food and Environment Protection Act 1985 s 14(4) (as substituted: see note 3).

12 Food and Environment Protection Act 1985 s 14(5) (as substituted: see note 3).

13 Food and Environment Protection Act 1985 s 14(6) (as substituted: see note 3).

14 Food and Environment Protection Act 1985 s 14(8) (as substituted: see note 3). In exercise of the power so conferred the Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427 (see PARA 552 et seq) were made which came into force on 1 July 1996: reg 1(1). As to the making of regulations see PARA 570.

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552. Registers to be maintained.

Registers maintained by the Minister¹ and the Secretary of State² must contain the prescribed particulars³ as respects licences⁴ for which each is the licensing authority⁵.

1 For these purposes, 'Minister' means the Minister of Agriculture, Fisheries and Food (no longer in existence: see PARA 58 note 1): Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 1(2). As to the Secretary of State see PARA 58.

2 For these purposes, 'Secretary of State' means the Secretary of State for Wales: Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 1(2). However see also PARA 59 as to the Welsh Ministers.

3 I.e. the particulars set out in the Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, regs 3-12: see PARA 553 et seq.

4 For these purposes, 'licence' means a licence issued by a licensing authority under the Food and Environment Protection Act 1985 Pt II (ss 5-15) (see PARA 525 et seq): Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 1(2).

5 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 2. As to the meaning of 'licensing authority' see PARA 527 note 1. As to environmental information generally see PARA 55.

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553. Applications for licence to deposit.

The particulars in relation to an application for a licence¹ to deposit substances or articles either in the sea or under the sea bed are:

- 1143 (1) the reference number of any current licence together with the date of expiry of the licence and the quantities of substances or articles already deposited pursuant to it;
- 1144 (2) the name, address and telephone number of the applicant;
- 1145 (3) the name, address and telephone number of the producer of the substances or articles, where known;
- 1146 (4) the name, address and telephone number of the persons responsible for the storage and transport of the substances or articles from the date of the application until the date of deposit;
- 1147 (5) the dates of commencement and expiry of the licence sought by the applicant;
- 1148 (6) the place of production or the source of the substances or articles, where known;
- 1149 (7) the method of production of the substances or articles, where known;
- 1150 (8) the description, composition and quantity of the substances or articles and, in the case of activities associated with construction at sea, the location and description of the works and the method of construction;
- 1151 (9) the name and description of any vehicle, vessel, aircraft, hovercraft, marine structure, floating container or structure on land from which the deposit is to be made, the maximum cargo, the method of deposit, and the rate of deposit;
- 1152 (10) the place from which it is intended that the substances or articles are to be removed to the site of deposit;
- 1153 (11) the name and the latitude and longitude of the location at which it is intended that the substances or articles are to be deposited;
- 1154 (12) details of any studies of the potential environmental effects of the activities to be licensed supplied with an application and any correspondence relating to the potential environmental effects of the activities to be licensed; and
- 1155 (13) details of the practical availability of any alternative methods of disposal, and the reason for seeking to deposit the substances or articles in the sea².

¹ As to the meaning of 'licence' see PARA 553 note 4.

² Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 3.

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554. Application for licence to scuttle.

The particulars in relation to an application for a licence¹ to scuttle a vessel at sea are:

- 1156 (1) the name, address and the telephone number of the applicant;
- 1157 (2) the name, address and telephone number of any agent, contractor or sub-contractor engaged in the proposed scuttling of the vessel;
- 1158 (3) the proposed date on which the vessel is to be scuttled;
- 1159 (4) the name, the registration number and the country of registration of the vessel;
- 1160 (5) a description of any cargo by reference to its composition and quantity;
- 1161 (6) a description and specification of the vessel;
- 1162 (7) the name and the latitude and longitude of the location of the vessel at the date of the application;
- 1163 (8) the name and the latitude and longitude of the place from which it is intended to take the vessel to scuttle it;
- 1164 (9) the name and the latitude and longitude of the location at which it is intended that the vessel is to be scuttled;
- 1165 (10) details of any studies of the potential environmental effects of the activities to be licensed supplied with an application and any correspondence relating to the potential environmental effects of the activities to be licensed; and
- 1166 (11) details of the practical availability of any alternative methods of disposal and the reason for seeking to scuttle the vessel in the sea².

¹ As to the meaning of 'licence' see PARA 553 note 4.

² Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 4.

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555. Application for licence to incinerate.

The particulars in relation to an application for a licence¹ to incinerate substances or articles at sea are:

- 1167 (1) the reference number of any current licence together with the date of expiry of the licence and the quantities of substances or articles already incinerated pursuant to it;
- 1168 (2) the name, address and telephone number of the applicant;
- 1169 (3) the name, address and telephone number of the producer of the substances or articles, where known;
- 1170 (4) the name, address and telephone number of the persons responsible for the storage and transport of the substances or articles from the date of the application until the date of incineration;
- 1171 (5) the dates of commencement and expiry of the licence sought by the applicant;
- 1172 (6) the place of production or the source of the substances or articles, where known;
- 1173 (7) the method of production of the substances or articles, where known;
- 1174 (8) the description, composition and quantity of the substances or articles and, in the case of activities associated with construction at sea, the location and description of the works and the method of construction;
- 1175 (9) the name and description of any vessel or marine structure on which incineration is to take place, the maximum cargo and the rate of incineration;
- 1176 (10) the place from which it is intended that the substances or articles are to be removed to the site of incineration;
- 1177 (11) the name and the latitude and longitude of the location at which it is intended that the substances or articles are to be incinerated;
- 1178 (12) details of any studies of the potential environmental effects of the activities to be licensed supplied with an application and any correspondence relating to the potential environmental effects of the activities to be licensed; and
- 1179 (13) details of the practical availability of any alternative methods of disposal, and the reason for seeking to incinerate the substances or articles in the sea².

¹ As to the meaning of 'licence' see PARA 553 note 4.

² Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 5.

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556. Licence to deposit.

The particulars in relation to a licence¹ to deposit substances or articles either in the sea or under the sea bed are:

- 1180 (1) the licence number;
- 1181 (2) the name and address of the licence holder;
- 1182 (3) the name and address of the producer of the substances or articles, where known;
- 1183 (4) the name and address of the persons responsible for the storage and transport of the substances or articles from the date of the application until the date of deposit;
- 1184 (5) the dates of commencement and expiry of the licence;
- 1185 (6) the intended time and the date of deposit;
- 1186 (7) the place of production or the source of the substances or articles, where known;
- 1187 (8) the method of production of the substances or articles, where known;
- 1188 (9) the description, composition and quantity of the substances or articles and, in the case of activities associated with construction at sea, the location and description of the works and the method of construction;
- 1189 (10) the name and description of any vehicle, vessel, aircraft, hovercraft, marine structure, floating container or structure on land from which the deposit is to be made;
- 1190 (11) the name and the latitude and longitude of the location at which it is intended that the substances or articles are to be deposited;
- 1191 (12) the method of deposit; and
- 1192 (13) details of the general and any special conditions attached to the licence².

¹ As to the meaning of 'licence' see PARA 553 note 4.

² Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 6.

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557. Licence to scuttle.

The particulars in relation to a licence¹ to scuttle a vessel at sea are:

- 1193 (1) the licence number;
- 1194 (2) the name and address of the licence holder;
- 1195 (3) the name and address of the person engaged in the scuttling of the vessel;
- 1196 (4) the dates of commencement and expiry of the licence;
- 1197 (5) the name and registration number of the vessel;
- 1198 (6) the name and the latitude and longitude of the place from which it is intended to take the vessel to scuttle it;
- 1199 (7) the name and the latitude and longitude of the location at which it is intended that the vessel is to be scuttled; and
- 1200 (8) details of the general and any special conditions attached to the licence².

1 As to the meaning of 'licence' see PARA 553 note 4.

2 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 7.

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558. Licence to incinerate.

The particulars in relation to a licence¹ to incinerate substances or articles at sea are:

- 1201 (1) the licence number;
- 1202 (2) the name and address of the licence holder;
- 1203 (3) the name and address of the producer of the substances or articles, where known;
- 1204 (4) the name and address of the persons responsible for the storage and transport of the substances or articles from the date of the application until the date of incineration;
- 1205 (5) the dates of commencement and expiry of the licence;
- 1206 (6) the intended time and the date of incineration;
- 1207 (7) the place of production or the source of the substances or articles, where known;
- 1208 (8) the method of production of the substances or articles, where known;
- 1209 (9) the description, composition and quantity of the substances or articles and, in the case of activities associated with construction at sea, the location and description of the works and the method of construction;
- 1210 (10) the name and description of any vessel or marine structure on which incineration is to take place;
- 1211 (11) the name and the latitude and longitude of the location at which it is intended that the substances or articles are to be incinerated;
- 1212 (12) the method of incineration; and
- 1213 (13) details of the general and any special conditions attached to the licence².

¹ As to the meaning of 'licence' see PARA 553 note 4.

² Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 8.

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559. Refusal of a licence.

The particulars in relation to a refusal of a licence¹ are:

- 1214 (1) a reference to the application;
- 1215 (2) the reason for the refusal; and
- 1216 (3) the date of the refusal².

1 As to the meaning of 'licence' see PARA 553 note 4.

2 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 9(1).

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560. Variation of a licence.

The particulars in relation to a variation of a licence¹ are:

- 1217 (1) the licence number;
- 1218 (2) the reason for the variation;
- 1219 (3) details of the variation of the licence; and
- 1220 (4) the date of the variation².

1 As to the meaning of 'licence' see PARA 553 note 4.

2 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 9(2).

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561. Refusal of a variation of a licence.

The particulars in relation to a refusal of a variation of a licence¹ are:

- 1221 (1) the licence number;
- 1222 (2) the reason for the refusal; and
- 1223 (3) the date of the refusal².

1 As to the meaning of 'licence' see PARA 553 note 4.

2 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 9(3).

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562. Revocation of a licence.

The particulars in relation to the revocation of a licence¹ are:

- 1224 (1) the licence number;
- 1225 (2) the reason for the revocation; and
- 1226 (3) the date of the revocation².

1 As to the meaning of 'licence' see PARA 553 note 4.

2 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 9(4).

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563. Written representations etc.

The particulars in relation to written representations made and notice given¹ are:

- 1227 (1) the licence² number;
- 1228 (2) the reason for the inclusion of the relevant provision in the licence;
- 1229 (3) details of the written representations;
- 1230 (4) a summary of the details of the report prepared by the committee³;
- 1231 (5) details of the result of the licensing authority's reconsideration⁴.

1 le under the Food and Environment Protection Act 1995 s 8(12), Sch 3: see PARA 534.

2 As to the meaning of 'licence' see PARA 553 note 4.

3 See note 1.

4 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 9(5).

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564. Convictions for offences.

The particulars in relation to a conviction for an offence¹ are:

- 1232 (1) the licence² number;
- 1233 (2) the name and address of the convicted person;
- 1234 (3) the date of the offence;
- 1235 (4) the reason for the prosecution;
- 1236 (5) the court where the case was heard;
- 1237 (6) the date of the court hearing; and
- 1238 (7) any penalty imposed by the court³.

1 le under the Food and Environment Protection Act 1995 s 9: see PARAS 535, 536.

2 As to the meaning of 'licence' see PARA 553 note 4.

3 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 10.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/8. SHIPPING AND POLLUTION/(4) DEPOSITS IN THE SEA/(iv) Public Registers/565. Further information.

565. Further information.

The particulars in relation to information obtained or furnished by or to a licensing authority¹ are:

- 1239 (1) details of any information required pursuant to the provisions included in a licence²;
- 1240 (2) a summary of data from automatic recording equipment³; and
- 1241 (3) the results of any examinations and tests carried out⁴ at the request of a licensing authority⁵.

The particulars in relation to licensed operations are the results of any inspections of such operations by the licensing authority⁶.

- 1 le in pursuance of the Food and Environment Protection Act 1995 s 8(3), (4) or (5): see PARA 531.
- 2 le under the Food and Environment Protection Act 1995 s 8(3). As to the meaning of 'licence' see PARA 553 note 4.
- 3 le required pursuant to the Food and Environment Protection Act 1995 s 8(4)(a)(ii).
- 4 le under the Food and Environment Protection Act 1995 s 8(5).
- 5 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 11(1).
- 6 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 11(2).

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566. Operations under the power to take remedial action.

The particulars in relation to the occasion on which the Minister¹ or the Secretary of State² has carried out an operation under his power to take remedial action³ are:

- 1242 (1) the licence⁴ number;
- 1243 (2) the date of any operation;
- 1244 (3) the reason for the operation;
- 1245 (4) the action taken; and
- 1246 (5) any expenses incurred and the amount of any expenses recovered from any person convicted of an offence where the Minister or the Secretary of State has exercised his power to take remedial action⁵.

1 As to the meaning of 'Minister' see PARA 552 note 1.

2 As to the meaning of 'Secretary of State' see PARA 552 note 2.

3 Ie under the Food and Environment Protection Act 1995 s 10: see PARA 539.

4 As to the meaning of 'licence' see PARA 553 note 4.

5 Deposits in the Sea (Public Registers of Information) Regulations 1996, SI 1996/1427, reg 12.

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(v) Miscellaneous Provisions

A. CHARGES FOR TESTS

567. Powers of Ministers to test and charge for testing.

At the request of any person either of the Ministers¹ may conduct tests for the purpose of ascertaining the probable effect on the marine environment and the living resources which it supports of using for the purpose of treating oil on the surface of the sea² any substance produced for that purpose³.

If either of the Ministers conducts any such tests, he may recover any expenses reasonably incurred by him in conducting them from any person at whose request they were conducted⁴.

1 As to the meaning of 'Ministers' see PARA 527 note 1.

2 As to the meaning of 'sea' see PARA 525 note 5.

3 Food and Environment Protection Act 1985 s 13(1).

4 Food and Environment Protection Act 1985 s 13(2).

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B. CROWN APPLICATION

568. Application to the Crown.

A person authorised to enforce Part II of the Food and Environment Protection Act 1985¹ may perform any functions under that Act in relation to land in which there is a Crown interest².

Such a person must not, however, perform any functions in relation to land in which there is no interest other than a Crown interest or a Duchy interest³ or in relation to land which is exclusively in Crown occupation⁴.

1 le the Food and Environment Protection Act 1985 Pt II (ss 5-15): see PARA 525 et seq.

2 Food and Environment Protection Act 1985 s 20(2), (4)(c). For these purposes, 'Crown interest' means any interest belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department: s 20(5).

3 For these purposes, 'Duchy interest' means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall: Food and Environment Protection Act 1985 s 20(5).

4 Food and Environment Protection Act 1985 s 20(3). For these purposes, 'Crown occupation' means occupation by Her Majesty in right of the Crown or occupation by a government department: s 20(5).

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C. FINANCIAL PROVISIONS

569. Financial provisions.

There must be paid out of money provided by Parliament all sums required for the purpose of making payments on behalf of Her Majesty's government in the United Kingdom to the international organisations¹.

Any expenses of a Minister of the Crown or government department incurred in consequence of the provisions of the Food and Environment Protection Act 1985 must also be paid out of money provided by Parliament².

Any receipts of a Minister of the Crown or government department under the 1985 Act must be paid into the Consolidated Fund³.

1 Food and Environment Protection Act 1985 s 23(1). As to the meaning of 'United Kingdom' see PARA 1 note 2. For these purposes, 'international organisation' means any organisation established in pursuance of the Convention for the Prevention of Marine Pollution by the Dumping of Wastes and Other Matter 1972 (London, Mexico City, Moscow and Washington, 29 December 1972 to 31 December 1973; TS 43 (1976); Cmnd 6486) art XIV or the International Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo, 15 February 1972; TS 119 (1975); Cmnd 6228) art 16: Food and Environment Protection Act 1985 s 24(1).

2 Food and Environment Protection Act 1985 s 23(2).

3 Food and Environment Protection Act 1985 s 23(3).

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D. POWER TO MAKE ORDERS ETC

570. Orders and regulations.

Any power conferred by the Food and Environment Protection Act 1985 to make orders or regulations may be exercised:

1247 (1) either in relation to all cases to which the power extends, or in relation to all those cases subjected to specified exceptions, or in relation to any specified cases or classes of case; and

1248 (2) so as to make, as respects the cases in relation to which it is exercised:

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90. (a) the full provision to which the power extends or any less provision, whether by way of exception or otherwise;

91. (b) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of the 1985 Act;

92. (c) any such provision either unconditionally, or subject to any specified condition,

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and includes power to make such incidental or supplemental provision in the orders or regulations as the Minister making them considers appropriate¹.

¹ Food and Environment Protection Act 1985 s 24(3).

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571. Channel Islands etc.

Her Majesty may by Order in Council make provision for extending Part II of the Food and Environment Protection Act 1985¹ to any of the Channel Islands, the Isle of Man or any colony², with such exceptions, adaptations or modifications as may be specified in the Order³.

Such an Order which makes provision for extending Part II of the 1985 Act to any place outside the United Kingdom may also make provision for extending Part IV of the 1985 Act⁴ to that place with such exceptions, adaptations or modifications as may be specified in the Order, in so far as it appears to Her Majesty that the extension of Part IV of the 1985 Act to that place is appropriate⁵.

1 le the Food and Environment Protection Act 1985 Pt II (ss 5-15): see PARA 525 et seq.

2 As to the meaning of 'colony' see **STATUTES** vol 44(1) (Reissue) PARA 1383.

3 Food and Environment Protection Act 1985 s 26(1). In exercise of the power so conferred Her Majesty made the Food and Environment Protection Act 1985 (Guernsey) Order 1987, SI 1987/665 (amended by SI 1997/1770); the Food and Environment Protection Act 1985 (Jersey) Order 1987, SI 1987/667 (amended by SI 1997/1771); and the Environment Protection (Overseas Territories) Order 1988, SI 1988/1084 (amended by SI 1997/1748; and SI 1999/669).

4 le the Food and Environment Protection Act 1985 Pt IV (ss 20-28) (general and supplementary provisions).

5 Food and Environment Protection Act 1985 s 26(2). As to the meaning of 'United Kingdom' see PARA 1 note 2.

UPDATE

571 Channel Islands etc

TEXT AND NOTES--Food and Environment Protection Act 1985 s 26 repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 2 (not yet in force).

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(5) SEWAGE AND GARBAGE

(i) Pollution by Sewage and Garbage

572. Prevention of pollution from ships.

The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008¹ implement certain parts of the International Convention for the Prevention of Pollution from Ships² (the 'Convention') relating to the prevention of pollution by sewage and the prevention of pollution by garbage.

In relation to the prevention of pollution by sewage³, the 2008 Regulations make provision for the surveys⁴ to be carried out and sewage certificates⁵ to be issued⁶. They also provide for surveys of United Kingdom ships⁷ to be carried out voluntarily, where the ships are not subject to the requirements but the owners request a survey⁸. They also provide for ships to have certain equipment⁹. The discharge of sewage into the sea¹⁰ is prohibited, apart from in controlled and regulated circumstances¹¹.

In relation to the prevention of pollution by garbage¹², the 2008 Regulations prohibit the disposal of plastics or mixtures of garbage into the sea¹³, and prohibit the disposal of other garbage except in certain circumstances¹⁴. United Kingdom ships are restricted from entering the Antarctic area¹⁵ unless they have sufficient capacity for the retention of garbage on board¹⁶, and requirements are imposed for the carrying of placards relating to the disposal of garbage¹⁷. Ships are required to have a garbage management plan¹⁸; and requirements are also imposed in relation to keeping a garbage record book¹⁹.

The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008²⁰ make provision in relation to powers of inspection and detention of ships, for offences and defences, service of documents on foreign companies and enforcement²¹. Provision is also made for jurisdiction over offences committed outside the United Kingdom²² and for suspension of proceedings at flag state request²³.

1 Ie the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, which came into force on 1 February 2009: see reg 1. The 2008 Regulations revoke and replace the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1998, SI 1998/1377 (which themselves revoked and replaced the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1988, SI 1988/2292) and go further than the revoked regulations by making provision for the prevention of pollution by sewage: see the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 5. As to the application of the 2008 Regulations see reg 6.

2 Ie the International Convention for the Prevention of Pollution from Ships 1973 (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748) which constitutes attachment 1 to the final act of the International Conference on Marine Pollution signed in London on 2 November 1973 (as modified by the Protocol of 1978 relating to that Convention). The parts are Annex IV (Regulations for the Prevention of Pollution by Sewage) and Annex V (Regulations for the Prevention of Pollution by Garbage). Annex IV came into force internationally on 27 September 2003, and a revised Annex IV came into force on 1 August 2005. Annex V came into force internationally on 31st December 1988. See also PARA 360.

3 Ie the Convention Annex IV. For the purposes of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, 'sewage' means (1) drainage and other wastes from any form of toilets and urinals; (2) drainage from medical premises (including, for example, a dispensary or sick

bay) via wash basins, wash tubs and scuppers located in such premises; (3) drainage from spaces containing living animals; or (4) other waste waters when mixed with any drainage referred to in head (1), (2) or (3) above: reg 2(2)(c). A 'discharge', in relation to sewage, means any release howsoever caused from a ship, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying, and cognate expressions are to be construed accordingly: reg 2(2)(a). Generally, a 'discharge' does not include: (a) dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, signed at London on 13 November 1972, as amended by the 1996 Protocol; or (b) the release of sewage for the purposes of legitimate scientific research into pollution abatement or control: Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 2(3).

4 For these purposes, 'survey' means a survey carried out by a surveyor, and 'surveyor' a surveyor of ships, or any other person appointed by a Certifying Authority (other than the Secretary of State) to be a surveyor: Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 2(1). 'Certifying Authority' means the Secretary of State or any organisation which is an authorised organisation for the purposes of the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996, SI 1996/2908 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 601): Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 2(1). As to the Secretary of State see PARA 58.

5 For these purposes, 'sewage certificate' means an International Sewage Pollution Prevention Certificate referred to in the Convention Annex IV reg 5: Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 2(1).

6 See the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, regs 7-19. The 2008 Regulations provide for initial, renewal and additional surveys of ships (see regs 7, 8, 10); responsibilities of the owner and master of the ship (see reg 9); the issue, duration, extension, cancellation and surrender of sewage certificates (see regs 10-15, 18); the procedure to be adopted when a ship is deficient (see reg 16); arbitration where an applicant is dissatisfied with a survey (see reg 17); prohibition of non-United Kingdom ships proceeding to sea without a sewage certificate (see reg 19).

7 For these purposes, a 'United Kingdom ship' means a ship which (1) is registered in the United Kingdom; or (2) is not registered under the law of any country but is wholly owned by persons each of whom is (a) a British citizen, a British overseas territories citizen or a British Overseas citizen; or (b) a body corporate which is established under the law of any part of the United Kingdom and has its principal place of business in the United Kingdom: Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 2(5). 'Ship' means a vessel of any type whatsoever, including a hydrofoil boat, an air-cushion vehicle, a submersible, a floating craft and a fixed or floating platform, which is operating in the marine environment: reg 2(1). As to the meaning of 'United Kingdom' see PARA 1 note 2.

8 See the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 20. This provision effectively covers the survey and certification of ships to which regs 7, 8 and 10 do not apply.

9 As to sewage systems see the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 21; and as to discharge connections see reg 22.

10 For these purposes, 'sea' includes any estuary or arm of the sea: Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 2(1).

11 See the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, regs 23-25. As to the prohibition against discharging sewage from a ship into the sea see reg 23; as to the exception for a ship equipped with a sewage treatment plant see reg 24; and as to the exception for other ships see reg 25.

12 See the Convention Annex V. For the purposes of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, 'garbage' means all kinds of victual, domestic and operational wastes generated during the normal operation of a ship and liable to be disposed of continuously or periodically, but does not include fresh fish and parts thereof, sewage, or any other substance the disposal of which is prohibited or otherwise controlled under an Annex to the Convention other than Annex V: Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 2(2) (b).

13 See Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 26.

14 As to the prohibition on disposal of garbage other than plastics from a ship outside a special area see the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 27; as to the prohibition on disposal of garbage from a ship within a special area see reg 28;

and as to the prohibition of garbage from a relevant platform or from a ship alongside a relevant platform see reg 29. For these purposes, a 'special area' is any of the following areas, that is to say (1) the Antarctic area, which means the sea area south of latitude 60° S; (2) the Baltic Sea area, which means the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8' N; (3) the Black Sea area, which means the Black Sea proper with the boundary between the Mediterranean and the Black Sea constituted by the parallel 41° N; (4) the Gulfs area, which means the sea area located north-west of the rhumb line between Ras al Hadd (22°30' N, 59°48' E) and Ras al Fasteh (25°04' N, 61°25' E); (5) the Mediterranean Sea area, which means the Mediterranean Sea proper including the gulfs and seas therein with the boundary between the Mediterranean and the Black Sea constituted by the 41° N parallel and bounded to the west by the Straits of Gibraltar at the meridian 5°36' W; (6) the North Sea area, which means the North Sea proper including the seas within the following boundaries: (a) the North Sea southwards of latitude 62° N and eastwards of longitude 4° W; (b) the Skagerrak, the southern limit of which is determined east of the Skaw by latitude 57°44.8' N; and (c) the English Channel and its approaches eastwards of longitude 5° W and northwards of latitude 48°30' N; (7) the Red Sea area, which means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12°28.5' N, 43°19.6' E) and Husn Murad (12°40.4' N, 43°30.2' E); (8) the Wider Caribbean Region, which means the Gulf of Mexico and Caribbean Sea proper including the bays and seas therein and that portion of the Atlantic Ocean within the boundary constituted by the 30° N parallel from Florida eastward to 77°30' W meridian, thence a rhumb line to the intersection of 20° N parallel and 59° W meridian, thence a rhumb line to the intersection of 7°20' N parallel and 50° W meridian, thence a rhumb line drawn south-westerly to the eastern boundary of French Guiana: regs 2(1), 3(1). However an area referred to in head (3), (5), (7) or (8) above is not a special area until such date as the International Maritime Organisation (i) establishes, pursuant to Annex V reg 5 para (4)(b), as the date from which the requirements of that regulation take effect in respect of the area in question; and (ii) publishes on the website of the International Maritime Organisation: Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 3(2). 'Relevant platform' means a fixed or floating platform which is used in connection with the exploration, exploitation or associated offshore processing of seabed mineral resources: reg 2(1). As to the International Maritime Organisation see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 13.

15 See note 14 head (1).

16 See the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 30.

17 See the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 31.

18 See the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 32.

19 As to garbage record books generally see the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 33; as to entries in garbage record books see reg 34; and as to exemptions from regs 33, 34 see reg 35.

20 See the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, Pt 7 (regs 36-47).

21 Matters covered include inspection of ships (see the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 36); investigation of alleged violations by United Kingdom ships (see reg 37); general provisions on detention (see reg 38); the power for the harbour master to detain (see reg 39); the duty of the harbour master to report deficient ships (see reg 40); the right of appeal and compensation (see reg 41); offences (see reg 42); defences (see reg 47); the service of documents on foreign companies (see reg 43); and the enforcement and application of fines (see reg 44).

22 See the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 45.

23 See the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257, reg 46.

UPDATE

572 Prevention of pollution from ships

NOTE 1--SI 2008/3257 reg 6 amended: SI 2010/897.

NOTE 3--SI 2008/3257 reg 2(2)(c) amended: SI 2010/897.

NOTE 6--SI 2008/3257 regs 16, 17 amended: SI 2010/897.

NOTE 17--SI 2008/3257 reg 31 amended: SI 2010/897.

NOTE 21--SI 2008/3257 regs 36, 38, 42, 44, 47 amended: SI 2010/897.

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Reception facilities for port waste.

(ii) Reception Facilities for Garbage

573. Reception facilities for port waste.

The Merchant Shipping (Reception Facilities for Garbage) Regulations 1988¹ have been revoked and replaced by the broader Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003² which are referred to elsewhere in this title³.

1 Ie the Merchant Shipping (Reception Facilities for Garbage) Regulations 1988, SI 1988/2293.

2 Ie the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003, SI 2003/1809.

3 See PARA 421 et seq.

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(6) DUMPING OF SLUDGE

574. Monitoring of dumping of sludge from ships.

It is the duty of the licensing authority¹:

1249 (1) to monitor or procure the monitoring by a competent authority or appropriate body of amounts and composition of sludges disposed of to surface waters by means of dumping from ships;

1250 (2) to carry out or procure the carrying out by a competent authority or appropriate body of monitoring and any other relevant studies to verify that the disposal of sludge to surface waters by means of dumping from ships does not adversely affect the environment².

The Environment Agency³ and the licensing authority must retain any information collected by them or by a competent authority or appropriate body in complying with the above provisions and must make it available to the Secretary of State on request⁴.

1 le within the meaning of the Food and Environment Protection Act 1985 s 24: see PARA 527 note 1.

It was the duty of the licensing authority, in the exercise of its functions under Pt II (ss 5-15) (see PARA 525 et seq), to secure that: (1) the dumping of sludge from ships to surface waters is phased out by 31 December 1998; and (2) the total amount of toxic, persistent or bioaccumulable materials in sludge so disposed of is licensed for disposal and progressively reduced in the period ending on that date: Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 9.

2 Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 11(2).

3 As to the Environment Agency see PARA 68 et seq.

4 Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, regs 2(1), 11(3) (reg 11(3) amended by the Environment Act 1995 Sch 22 para 233(1)). As to the Secretary of State see PARA 58.

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(7) EMISSION OF DARK SMOKE

575. Emission of dark smoke from vessels.

The prohibition of emissions of dark smoke¹ applies in relation to vessels² in:

- 1251 (1) all waters not navigable by sea-going ships; and
- 1252 (2) all waters navigable by sea-going ships which are within the seaward limits of the territorial waters of the United Kingdom³ and are contained within any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under any Act to make charges⁴ in respect of vessels entering it or using facilities in it,

as it applies in relation to buildings⁵.

For these purposes, a vessel in any such waters which are not within the district of the local authority⁶ is deemed to be within the district of the local authority whose district includes that point on land which is nearest to the spot where the vessel is⁷.

The owner of, and the master or other officer in charge of, the vessel is guilty of an offence if, on any day, dark smoke is emitted from the vessel and is liable to a fine⁸.

Except as provided by the above provisions, nothing in the Clean Air Act 1993⁹ applies to smoke, grit or dust from any vessel¹⁰.

1 Ie the prohibition in the Clean Air Act 1993 s 1: see PARA 214.

2 As to the meaning of 'vessel' see PARA 210 note 11.

3 As to the extent of the territorial sea (or waters) of the United Kingdom see the Territorial Sea Act 1987 s 1; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 124; and **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

4 For these purposes, 'charges' means any charges with the exception of light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons and of charges in respect of pilotage: see the Clean Air Act 1993 s 44(5); and PARA 216. As to light dues see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1083; as to local light dues see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1088; and as to pilotage charges see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 573.

5 See the Clean Air Act 1993 s 44(1), (4); and PARA 216. In the application of s 1 to a vessel: (1) for the reference in s 1(1) to the occupier of the building there must be substituted a reference to the owner of, and to the master or other officer or person in charge of, the vessel; (2) references to a furnace must be read as including references to an engine of the vessel; and (3) s 1(5) must be omitted: see s 44(2)(a)-(c); and PARA 216.

Section 44 applies, with the omission of the reference in s 44(2) (see the text and note 8) to the owner, to vessels owned by the Crown, except that it does not apply to vessels of Her Majesty's navy or to government ships in the service of the Secretary of State while employed for the purposes of Her Majesty's navy: see s 46(4); and PARA 216.

As to the right of an authorised person to board a vessel for the purposes of any functions conferred by virtue of the Clean Air Act 1993 or to carry out an inspection see s 56; and PARA 244.

6 As to the meaning of 'local authority' see PARA 99.

7 See the Clean Air Act 1993 s 44(3); and PARA 216.

8 see the Clean Air Act 1993 s 44(2); and PARA 216. The owner is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 44(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

9 le the Clean Air Act 1993 Pts I-III (ss 1-29).

10 See the Clean Air Act 1993 s 44(6); and PARA 216.

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9. ENVIRONMENTAL DUTIES IN FUEL AND ENERGY SECTORS

(1) GAS AND ELECTRICITY

(i) Introduction

576. Specific environmental obligations imposed by gas and electricity legislation.

Both the Gas Act 1986 and the Electricity Act 1989 impose on the Secretary of State¹ and the Gas and Electricity Markets Authority ('GEMA')² certain obligations with regard to the environment. The Secretary of State must issue guidance to the Authority about the attainment of environmental policies and the Authority must have regard to such guidance when carrying out its duties under those Acts³. Both Acts require the Authority to set targets for reductions in carbon emissions⁴ and the Electricity Act 1989 additionally allows the Secretary of State to impose obligations on designated electricity suppliers to ensure that a certain proportion of their supplies to consumers comes from renewable sources⁵. Fossil fuel levy continues to be payable by licensed electricity suppliers⁶ and the Energy Act 1976 imposes controls on the use of certain fuels for electricity generating stations⁷.

These, and other environmental controls, are considered in detail in other parts of this work⁸.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 708 et seq; and as to the use of the abbreviation 'GEMA' in this context see **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 708 note 5. As to GEMA's duty not to impose or maintain unnecessary regulatory burdens see the Regulatory Enforcement and Sanctions Act 2008 ss 72, 73; and **FUEL AND ENERGY**.

3 See the Gas Act 1986 s 4AB; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 790; the Electricity Act 1989 s 3B; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1042.

4 See the Gas Act 1986 s 33BC; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 895; the Electricity Act 1989 s 41A; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1137.

5 See the Electricity Act 1989 ss 32-32M; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1219 et seq.

6 See **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1241 et seq.

7 See **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARAS 1216-1217.

8 See the text and notes 3-7. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 614 et seq.

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(ii) Environmental Impact Assessment of Gas Pipeline Works

577. Requirement for assessment.

Pipeline works¹ by a gas transporter² required for the purposes of its undertaking and consisting of the laying underground of mains, pipes or other apparatus³ may require environmental impact assessment under the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999⁴, as discussed elsewhere in this work⁵. Other pipeline works⁶ may require such assessment under the Pipeline Works (Environmental Impact Assessment) Regulations 2000⁷ or the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁸, which are also discussed elsewhere in this work⁹.

1 As to the meaning of 'pipeline works' for these purposes see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 844 note 1.

2 As to the meaning of 'gas transporter' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 844 note 2.

3 I.e. pipeline works which fall within the class of development described as permitted development in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class F(a): see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 341. As to development not permitted by Sch 2 Pt 17, Class F see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 343; as to the general conditions subject to which such development is permitted see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 255; as to the special conditions subject to which such development is permitted see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 342; and as to directions restricting permitted development see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 258 et seq.

4 See the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672. See also note 5. The 1999 Regulations in their amended form implement EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) (amended by EC Council Directive 97/11/EC (OJ L73, 3.3.97, p 5); European Parliament and EC Council Directive 2003/35 (OJ L156, 25.6.2003, p 17); and European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 14)) on the assessment of the effects of certain public and private projects on the environment in so far as it relates to proposed pipeline works by a gas transporter (see PARAS 7, 18). The 1999 Regulations were made as the Public Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, but are retitled as the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, by virtue of the Utilities Act 2000 s 76(7): see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 805.

5 See **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 845 et seq. As to the requirement for an environmental statement see the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, regs 3, 4, Sch 2; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 845. As to requests to the Secretary of State for an environmental determination see regs 6, 8; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 846. As to the content of an environmental statement see Sch 1; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 847. As to pre-application requests to the Secretary of State for an opinion as to content of environmental statements see reg 7; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 848. As to information and publicity see regs 9, 10; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 849. As to further information and evidence respecting environmental statements see reg 11; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 850. As to projects affecting other states see reg 13; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 851. As to additional information and publicity see reg 13; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 852. As to consent to pipeline works see reg 14; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 853. As to applications to the court by persons aggrieved or by the Secretary of State see regs 15-17; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 854. As to offences see reg 18; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 855.

As to environmental impact assessment in the general planning context see **TOWN AND COUNTRY PLANNING**; as to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI

1999/293, see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 488 et seq; and as to the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60 et seq.

6 As to the meaning of 'pipeline works' for these purposes see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 844 note 6.

7 See under the Pipeline Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, regs 3-15, Schs 1, 2: see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 567.

8 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 488 et seq.

Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 millimetres and a length of more than 40 kilometres are 'Schedule 1 developments' for the purposes of those regulations (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 489 at head (16) in the text); and oil and gas pipeline installations, unless they are Schedule 1 developments, where the area of the works exceeds 1 hectare or, in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge, are 'Schedule 2 developments' for those purposes (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 490 at head (10) (k)).

As to the interaction between those regulations and the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 845.

9 See **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 567; **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 488 et seq.

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(iii) Preservation of Amenity; Assessment of Environmental Impact in certain Electricity Proposals

578. Preservation of amenity.

In formulating any proposals ('relevant proposals'):

- 1253 (1) for the construction¹ or extension² of a generating station³ of a capacity not less than 10 megawatts, or such other capacity as may be specified by order made by the Secretary of State⁴, or for the operation of such a station in a different manner;
- 1254 (2) for the installation, whether above or below ground, of an electric line⁵; or
- 1255 (3) for the execution of any other works for or in connection with the transmission⁶ or supply⁷ of electricity⁸,

a licence holder⁹ or a person authorised by exemption¹⁰ to generate¹¹, distribute¹², supply or participate in the transmission of electricity¹³ must:

- 1256 (a) have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings¹⁴ and objects of architectural, historic or archaeological interest¹⁵;
- 1257 (b) do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects¹⁶.

In considering any relevant proposals for which his consent is required¹⁷, the Secretary of State must have regard to the desirability of the matters mentioned in head (a) above and the extent to which the person by whom the proposals were formulated has complied with his duty under head (b) above¹⁸.

A licence holder must within 12 months from the grant of his licence prepare, and from time to time modify¹⁹, a statement setting out the manner in which he proposes to perform his duty under heads (a) and (b) above, including in particular the consultation procedures he intends to follow²⁰. Before so preparing or modifying a statement, he must consult:

- 1258 (i) where the activities which he is authorised by his licence to carry out include activities in England, Natural England²¹ and the Historic Buildings and Monuments Commission for England ('English Heritage')²²; and
- 1259 (ii) where those activities include activities in Wales, the Countryside Council for Wales²³ and the Welsh Ministers²⁴.

As soon as practicable after preparing or modifying such a statement, the licence holder must publish it as so prepared or modified in such manner as he considers appropriate²⁵.

- 1 As to the meaning of 'construction' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1312 note 4; and as to the application of this definition see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1249 note 2.
- 2 As to the meaning of 'extension' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1249 note 3.
- 3 As to the meaning of 'generating station' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041 note 6.
- 4 See the Electricity Act 1989 s 38, Sch 9 para 1(4). As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1. As to the making of orders generally see s 106; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1306. At the date at which this title states the law, no such order had been made for these purposes. Cf, however, the Electricity Act 1989 (Requirement of Consent for Offshore Wind and Water Driven Generating Stations) (England and Wales) Order 2001, SI 2001/3642, made under and for the purposes of the Electricity Act 1989 s 36; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1249.
- 5 As to the meaning of 'electric line' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041 note 5.
- 6 As to the meaning of 'transmission' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041 note 6.
- 7 As to the meaning of 'supply' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041 note 10.
- 8 See the Electricity Act 1989 Sch 9 para 1(3).
- 9 As to the meaning of 'licence holder' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041 note 12.
- 10 As to the meaning of 'exemption' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1046 note 7.
- 11 As to the meaning of 'generate' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041 note 7.
- 12 As to the meaning of 'distribute' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041 note 5.
- 13 As to the meaning of references to participating in the transmission of electricity see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1050 note 5.
- 14 For these purposes, 'building' includes structure: Electricity Act 1989 Sch 9 para 1(3).
- 15 Electricity Act 1989 Sch 9 para 1(1)(a) (Sch 9 para 1(1) amended by the Energy Act 2004 Sch 19 paras 3, 16; and by SI 2001/3264).
- 16 Electricity Act 1989 Sch 9 para 1(1)(b) (as amended: see note 15). See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq. However see now also the Conservation of Habitats and Species Regulations 2010, SI 2010/490 (replacing and consolidating the 1994 Regulations); and **OPEN SPACES AND COUNTRYSIDE**. As to the assessment of environmental impact see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254 et seq. See also PARA 579.
- 17 Ie under the Electricity Act 1989 s 36 (consent in relation to generating stations) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1249) or s 37 (consent in relation to electric lines) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1252).
- 18 Electricity Act 1989 Sch 9 para 1(2).
- 19 As to the meaning of 'modify' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1035 note 3.
- 20 Electricity Act 1989 Sch 9 para 2(1).
- 21 As to Natural England see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.
- 22 Electricity Act 1989 Sch 9 para 2(2)(a) (amended by the Environmental Protection Act 1990 Sch 9 para 16; and the Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 115, Sch 12). As to English Heritage see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 810 et seq; **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1058.
- 23 As to the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 524.
- 24 See the Electricity Act 1989 Sch 9 para 2(2)(b) (amended by the Environmental Protection Act 1990 s 132, Sch 9 para 16; and SI 2006/63). The statutory wording is 'the National Assembly for Wales' rather than the Welsh Ministers; but see PARA 59.

25 Electricity Act 1989 Sch 9 para 2(3). Schedule 9 paras 1, 2 extend to England and Wales only: Sch 9 para 1(5).

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579. Assessment of environmental impact.

The Secretary of State¹ must not grant a section 36 consent² or a section 37 consent³ which relates to EIA development⁴ unless certain prescribed requirements⁵ have been satisfied⁶.

An applicant must submit in relation to any application for a section 36 consent or a section 37 consent which relates to EIA development an environmental statement⁷ which includes certain prescribed information⁸. In relation to any such application, the Secretary of State must not grant the required consent unless: (1) he is satisfied that the applicant has complied with his obligations; (2) he has taken into consideration the environmental information⁹ and states in his decision in relation to that consent that he has done so; and (3) certain prescribed procedures¹⁰ have been followed in so far as they are applicable¹¹.

For full details reference should be made to the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000¹² which are discussed elsewhere in this work¹³.

¹ As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

² I.e. a consent under the Electricity Act 1989 s 36 to construct, extend or operate a generating station (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1249); see the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 2(1); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254 note 2.

³ I.e. a consent under the Electricity Act 1989 s 37 to install or keep installed an electric line above ground (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1252); see the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 2(1); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254 note 3.

⁴ As to the meaning of 'EIA development' (which includes Schedule 1 and Schedule 2 developments and anything else that the Secretary of State determines is EIA development) see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254. In spite of the fact that any development is not Schedule 1 development or Schedule 2 development, the Secretary of State may, having taken into account such of the prescribed criteria (see the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, Sch 3; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254 note 18) as are relevant to the development, make a determination (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254 note 19) that an application for a section 36 consent or a section 37 consent is for EIA development as the development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location: see Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 3(4); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254 note 20.

⁵ I.e. the requirements of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 4: see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254.

⁶ See the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 3(1); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254. A person who is minded to apply for a section 36 consent or a section 37 consent for development which he considers may be EIA development may make a written request to the Secretary of State for a screening opinion: see regs 5, 6; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1255. As to preparation of an environmental statement see regs 7, 8; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1256.

⁷ As to the meaning of 'environmental statement' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254 note 21. See note 6.

8 See the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 4(1), Sch 4; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254.

9 As to the meaning of 'environmental information' see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254 note 23.

10 Ie the procedures laid down in the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 9, reg 10(2A), regs 11-14, reg 14A: see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARAS 1257-1259.

11 See the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 4(2); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254.

¹² Ie the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927. See also note 13.

13 See **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1254 et seq. As to screening see the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, regs 5, 6; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1255. As to preparation of an environmental statement see regs 7, 8; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1256. As to publicity and procedures in connection with environmental impact assessment see regs 9-11, 13, 14; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1257. As to projects affecting other EEA states see reg 12; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1258. As to additional information and timing of determination see reg 14A; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1259.

As to environmental impact assessment in the general planning context see **TOWN AND COUNTRY PLANNING**; as to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 488 et seq; and as to the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60 et seq.

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ENVIRONMENTAL DUTIES IN FUEL AND ENERGY SECTORS/(2) NUCLEAR INDUSTRY/580.
Environmental impact assessment for decommissioning of nuclear reactors.

(2) NUCLEAR INDUSTRY

580. Environmental impact assessment for decommissioning of nuclear reactors.

A licensee¹ must not commence a project² unless he has applied to the Health and Safety Executive (the 'Executive')³ for a consent to carry out the project and such a consent has been granted for these purposes by the Executive⁴.

For full details reference should be made to the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999⁵ which are discussed elsewhere in this work⁶.

1 le a person to whom a nuclear site licence has been granted under the Nuclear Installations Act 1965 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1490) whether or not that licence remains in force: see the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 2(1); and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1614.

2 As to the meaning of 'project' see the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 2(1), 3; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1614. In essence this means the carrying out of any dismantling or decommissioning work on any nuclear power station or nuclear reactor to which the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1615 et seq) apply, namely, subject to certain exceptions (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1614), nuclear power stations and other nuclear reactors, except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kilowatt continuous thermal load.

3 As to the Health and Safety Executive see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1391; and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 361 et seq.

4 See the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, regs 2(1), 4; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1614.

5 le the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892. See also note 6.

6 See **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1614 et seq. As to provision of an environmental statement see the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, regs 5, 7, 14, Sch 1; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1615. As to pre-application opinion as to the content of an environmental statement see reg 6; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1616. As to publicity see reg 9; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1617. As to further information and evidence respecting environmental statements see reg 10; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1618. As to procedure by the Health and Safety Executive see reg 8; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1619. As to information as to decisions see reg 11; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1620. As to projects likely to have effects on the environment in another EEA state see reg 12; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1621. As to change or extension of projects see reg 13; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1622. As to recovery of expenses by the Health and Safety Executive see reg 15; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1623. As to enforcement see reg 16; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1624.

As to environmental impact assessment in the general planning context see **TOWN AND COUNTRY PLANNING**; as to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 488 et seq; and as to the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60 et seq.

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(3) PETROLEUM PRODUCTION

(i) Licensing

A. ASSESSMENT OF ENVIRONMENTAL EFFECTS

581. Requirements as to contents of licences and use of floating or mobile installations.

The Secretary of State¹ may not grant any licence² which does not require the licensee to obtain the prior consent of the Secretary of State to any of the following operations wholly or partly in the relevant area³: (1) the commencement or recommencement of the drilling of any well⁴; (2) the extraction of petroleum⁵, otherwise than as a by-product of the drilling or the testing of any well, where the amount extracted exceeds 500 tonnes per day in the case of oil⁶ and 500,000 cubic metres per day in the case of gas⁷; or (3) the erection of any structure⁸ in connection with a development⁹. Nor may the Secretary of State exercise any power conferred on him to vary the terms of a licence so as to relieve the licensee of any requirement to obtain his consent to any of the operations to which heads (1) to (3) above apply¹⁰.

Notwithstanding any provision in any licence, an undertaker¹¹ must not without the prior written consent of the Secretary of State¹²: (a) use a floating installation¹³ in connection with a relevant project comprising a development; or (b) use any mobile installation for the extraction of petroleum where the principal purpose of the extraction is the testing of any well¹⁴.

For full details reference should be made to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999¹⁵ which are discussed elsewhere in this work¹⁶.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 I.e. a licence granted or having effect as if granted under the Petroleum Act 1998 s 3 (licences to search and bore for and get petroleum) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1639): see the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 3(1); and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644.

3 As to the meaning of 'relevant area' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644 note 4.

4 As to the meaning of 'well' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644 note 5.

5 As to the meaning of 'petroleum' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644 note 6.

6 As to the meaning of 'oil' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644 note 7.

7 As to the meaning of 'gas' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644 note 8.

8 As to the meaning of 'structure' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644 note 9.

9 See the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 4(1), (2); and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644. As to the meaning of 'development' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644 note 10.

10 See the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 4(3); and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644.

11 As to the meaning of 'undertaker' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1645 note 2.

12 Is granted in accordance with the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360: see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1646 et seq. See also note 16.

13 As to the meaning of 'floating installation' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1645 note 5.

14 See the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 4(4)(a), (b); and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1645.

15 Is the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360. See also note 16.

16 See **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1644 et seq. As to grant of consent of the Secretary of State in respect of relevant projects see the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 5, Schs 1, 2; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1646. As to directions that no environmental statement need be prepared see reg 6; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1647. As to opinion by Secretary of State as to content of environmental statements see reg 7; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1648. As to obtaining of information for the preparation of environmental statements see reg 8; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1649. As to procedure on receipt of application where environmental statement prepared, publicity requirements, etc see reg 9; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1650. As to provision to the Secretary of State of further information and evidence respecting environmental statements see reg 10; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1651. As to exercise by the Secretary of State of powers under licences see reg 11; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1652. As to projects affecting other states see reg 12; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1653. As to projects in other EEA states having a significant effect on the environment in the transboundary area see reg 13; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1654. As to exempt projects see reg 14; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1655. As to applications to the court see regs 15-17; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1656. As to offences see reg 18; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1657.

As to environmental impact assessment in the general planning context see **TOWN AND COUNTRY PLANNING**; as to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 488 et seq; and as to the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60 et seq.

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B. CONSERVATION OF HABITATS

582. General duty of the Secretary of State when exercising relevant functions.

The Secretary of State¹ must² exercise functions conferred on him in relation to or in connection with offshore oil and gas activities³ ('relevant functions')⁴ in such manner and to such extent as he considers necessary to secure that such activities are carried out in a manner that is consistent with the requirements of the Habitats Directive⁵ and the Wild Birds Directive⁶.

The conservation of natural habitats is more fully dealt with elsewhere in this work⁷.

¹ As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

² In the extent not already provided for by the Conservation (Natural Habitats, etc) Regulations 1994, SI 1994/2716: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq. However see now also the Conservation of Habitats and Species Regulations 2010, SI 2010/490 (replacing and consolidating the 1994 Regulations); and **OPEN SPACES AND COUNTRYSIDE**.

³ For these purposes, 'offshore oil and gas activities' means oil and gas activities carried out wholly or partly in a relevant area; and 'oil and gas activities' means any activities carried out for or in connection with the exploration for or production of petroleum: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1) (definitions added by SI 2007/77). 'Petroleum' includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation; and 'relevant area' means an area comprising any of the following: (1) UK waters; (2) waters in a designated area; or (3) the sea bed and subsoil under the waters referred to in heads (1)-(2) above: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1) (definition of 'relevant area' as so added). 'UK waters' means parts of the sea in or adjacent to the United Kingdom from the low-water mark up to the seaward limits of territorial waters; and 'designated area' means any area for the time being designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636): Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1) (definitions as so added).

⁴ 'Relevant function' means any function exercisable by the Secretary of State in relation to or in connection with offshore oil and gas activities including, without limitation, functions exercisable under the Petroleum Act 1998 or any licence granted or having effect as if granted under that Act: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1) (definition amended by SI 2007/77).

⁵ 'Habitats Directive' means EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) on the conservation of natural habitats and wild fauna and flora (see PARAS 18, 54; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq): Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1).

⁶ See the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 3(1), (2) (substituted by SI 2007/77). 'Wild Birds Directive' means EEC Council Directive 79/409 (OJ L103, 25.04.79, p 1) on the conservation of wild birds (see PARAS 18, 54; and **ANIMALS** vol 2 (2008) PARAS 994, 1006; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728): Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1).

⁷ See PARA 54; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq.

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583. Consent for geological surveys.

In so far as they relate to oil and gas activities¹, the following activities or procedures must not be carried out in a relevant area² without the prior written consent of the Secretary of State³:

- 1260 (1) prospecting or carrying out geological surveys by physical or chemical means;
- 1261 (2) drilling for the purpose of obtaining geological information about strata; or
- 1262 (3) testing the surveying or drilling equipment to be used in the activities or procedures falling within head (1) or head (2) above⁴;

and this applies notwithstanding any provision in any Petroleum Act licence⁵.

The conservation of natural habitats is more fully dealt with elsewhere in this work⁶.

1 As to the meaning of 'oil and gas activities' see PARA 582 note 3.

2 As to the meaning of 'relevant area' see PARA 582 note 3.

3 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

4 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 4(1) (reg 4 substituted by SI 2007/77).

5 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 4(2) (as substituted: see note 4). 'Petroleum Act licence' means a licence which is granted under or has effect as if granted under the Petroleum Act 1998 or a licence which is to be granted under that Act: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1) (definition added by SI 2007/77). As to such licences see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1639 et seq.

6 See PARA 54; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq.

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584. Appropriate assessments.

Before granting any Petroleum Act licence¹, any consent², any authorisation³ or any approval⁴, the Secretary of State⁵ must, where he considers that anything that might be done or any activity which might be carried on pursuant to such a licence, consent, authorisation or approval is likely to have a significant effect on a relevant site⁶, whether individually or in combination with any other plan or project, including but not limited to any other relevant project⁷, make an appropriate assessment of the implications for the site in view of the site's conservation objectives⁸. For the purposes of the assessment the Secretary of State must consult the appropriate nature conservation body⁹ and must have regard to any representations made by that body within such reasonable time as he may specify and he must also, if he considers it to be appropriate, take the opinion of the general public¹⁰. Subject to the exception set out below¹¹, in the light of the conclusions of the assessment the Secretary of State may grant any such licence, consent, authorisation or approval only after having ascertained that nothing that might be done and no activity that might be carried out pursuant thereto would have an adverse effect on the integrity of a relevant site¹². This does not, however, apply to the doing of anything in connection with the carrying out of any relevant project affecting a relevant site:

- 1263 (1) to which, in the opinion of the Secretary of State, there is no satisfactory alternative; and
- 1264 (2) which the Secretary of State has certified in writing as a project which should be carried out for imperative reasons of overriding public interest, which may include reasons of a social or economic nature¹³.

The Secretary of State may not give a certification pursuant to head (2) above in respect of a project that is likely to have an adverse effect on the integrity of a site hosting a priority natural habitat type or a priority species¹⁴ unless:

- 1265 (a) the reason for so certifying relates to human health or public safety, or to beneficial consequences of primary importance for the environment; or
- 1266 (b) he has obtained the opinion of the European Commission as to whether the project might be carried out for imperative reasons of overriding public interest other than those referred to in head (a) above and his decision to give a certification is consistent with that opinion¹⁵.

Where the Secretary of State has given a certification pursuant to head (2) above, he must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000¹⁶ is protected, and in determining what such necessary compensatory measures may be, he must consult the appropriate nature conservation body¹⁷.

At such intervals as he thinks fit, the Secretary of State must carry out or cause to be carried out such investigation as he considers appropriate in relation to the effects of offshore oil and gas activities on the conservation status of natural habitats and species of wild fauna and flora, with particular regard to priority habitat types and priority species¹⁸. In the light of the results of

such investigation he must consider whether he ought to exercise any relevant power¹⁹ for the purposes of protecting such a natural habitat or species²⁰.

The conservation of natural habitats is more fully dealt with elsewhere in this work²¹.

1 As to the meaning of 'Petroleum Act licence' see PARA 583 note 5.

2 For these purposes and for the purposes of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7 (see PARA 618), 'consent' means (1) a consent granted pursuant to reg 4(1) (see PARA 583); or (2) a consent granted pursuant to a Petroleum Act licence, including any consent required pursuant to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (see PARA 581; and **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 644 et seq): Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, regs 2(1), 4(3) (definition in reg 2(1) and reg 4(3) respectively amended and substituted by SI 2007/77).

3 'Authorisation' means an authorisation granted pursuant to the Petroleum Act 1998 s 14 relating to the construction or use of a pipeline (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1743): Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1).

4 'Approval' means approval of an abandonment programme pursuant to the Petroleum Act 1998 Pt IV (ss 29-45) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1729 et seq): Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1).

5 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

6 'Relevant site' means (1) a special area of conservation (ie a site of Community importance designated by the member states through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated: see EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) art 1(l)); (2) a site of Community importance which has been placed on the list of selected sites which have been adopted, referred to in art 4(2); (3) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under art 5(1), during the consultation period or pending a decision of the Council under art 5(3); (4) an area classified pursuant to EEC Council Directive 79/409 (OJ L103, 25.4.79, p 1) art 4(1) or (2); or (5) a site included in the list of sites which has been transmitted to the Commission by the United Kingdom pursuant to EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) art 4: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1) (definition amended by SI 2007/1842). A site ceases to qualify as a site under head (5) above at such time as (a) the draft list of sites of Community importance is established under EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) art 4(2) where in any case the site is not included in that list; or (b) the list of sites referred to in art 4(2) is adopted by the Commission: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1). 'Natural habitats' means terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural; 'priority natural habitat types' means natural habitat types in danger of disappearance, which are present on the territory referred to in EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) art 2 and for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory referred to in art 2; these priority natural habitat types are indicated by an asterisk in Annex I; and 'priority species' means species referred to in art 1(g)(i) for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory referred to in art 2; these priority species are indicated by an asterisk in Annex II: see art 1(b), (d), (h); definitions applied by the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(2). As to the meaning of 'appropriate nature conservation body' see note 9. As to EEC Council Directive 92/43 see PARAS 18, 54; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq. As to EEC Council Directive 79/409 see PARAS 18, 54; **ANIMALS** vol 2 (2008) PARAS 994, 1006; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728.

7 'Relevant project' means any plan or project which relates to offshore oil and gas activities: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1) (definition amended by SI 2007/77). As to the meaning of 'offshore oil and gas activities' see PARA 582 note 3.

8 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 5(1) (reg 5(1), (2), (4) amended by SI 2007/77).

9 'Appropriate nature conservation body' means such body with responsibilities for providing relevant advice on nature conservation in relation to the land or waters within or adjacent to the relevant site, which the Secretary of State considers appropriate: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1) (definition added by SI 2007/77).

- 10 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 5(2) (as amended: see note 8).
- 11 Is subject to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 6: see the text and notes 13-20.
- 12 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 5(3).
- 13 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 6(1) (amended by SI 2007/1842).
- 14 As to the meaning of 'priority species' see note 6.
- 15 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 6(2).
- 16 'Natura 2000' means the European network of special areas of conservation, and special protection areas under the Wild Birds Directive, provided for by EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) (the 'Habitats Directive') art 3(1): Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1). See note 6.
- 17 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 6(3) (reg 6(3), (4)(a) amended by SI 2007/77).
- 18 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 6(4)(a) (as amended: see note 17).
- 19 'Relevant power' means any power exercisable by the Secretary of State in relation to or in connection with offshore oil and gas activities including, without limitation, powers exercisable under the Petroleum Act 1998 or any licence granted or having effect as if granted under that Act: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1) (definition amended by SI 2007/77).
- 20 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 6(4)(b).
- 21 See PARA 54; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq.

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(ii) Offshore Workings and Installations

A. POLLUTION PREVENTION AND CONTROL

(A) IN GENERAL

585. Prevention and control of pollution; in general.

Under the Pollution Prevention and Control Act 1999, the Secretary of State¹ has power by regulations² to make provision for specified purposes³ with the general purposes of:

- 1267 (1) implementing European Union legislation⁴ concerning integrated pollution prevention and control;
- 1268 (2) regulating, otherwise than in pursuance of that legislation, activities⁵ which are capable of causing any environmental pollution⁶; and
- 1269 (3) otherwise preventing or controlling emissions capable of causing any such pollution⁷.

Regulations and orders under the 1999 Act may make provision applying in relation to, and to places above and below:

- 1270 (a) the territorial waters adjacent to any part of the United Kingdom⁸;
- 1271 (b) the sea in any designated area within the meaning of the Continental Shelf Act 1964⁹; and
- 1272 (c) the sea in any area in a foreign sector of the continental shelf¹⁰ which comprises any part of a cross-boundary field¹¹ and is specified for certain purposes¹² of the Petroleum Act 1998¹³.

¹ As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

² As to the making of such regulations see the Pollution Prevention and Control Act 1999 s 2(3), (7)-(9); and PARA 186 note 2.

³ As to the specified purposes see the Pollution Prevention and Control Act 1999 Sch 1 Pt I; and PARA 187.

⁴ Ie European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version): see PARAS 6, 18.

⁵ As to the meaning of 'activities' see PARA 186 note 6.

⁶ As to the meaning of 'environmental pollution' see PARA 186 note 7.

⁷ See the Pollution Prevention and Control Act 1999 s 1(1); and PARA 186.

⁸ Generally as to the territorial sea of the United Kingdom see **WATER AND WATERWAYS** vol 100 (2009) PARA 31; and as to the meaning of 'United Kingdom' see PARA 1 note 2.

9 See **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636; and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 172.

10 As to the meaning of 'foreign sector of the continental shelf' for these purposes see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1678 note 13.

11 As to the meaning of 'cross-boundary field' for these purposes see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1678 note 14.

12 le specified under the Petroleum Act 1998 s 10(8): see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1678.

13 Pollution Prevention and Control Act 1999 s 7(9).

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(B) RESTRICTIONS ON DISCHARGE OF OIL FROM OFFSHORE PETROLEUM ACTIVITIES

586. Restrictions on discharge of oil; discharge permits.

Subject to certain exceptions¹, no oil² must be discharged³ into relevant waters⁴ save in accordance with the terms of, and conditions attached to, a permit granted in accordance with the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005⁵. Contravention of this provision is an offence⁶.

A person who discharges oil into relevant waters must provide the Secretary of State⁷ with such information as the Secretary of State may reasonably require for the purpose of performing his functions under the 2005 Regulations⁸; and failure to do so is an offence⁹.

An application for the grant of a permit must be made in writing¹⁰ by the operator¹¹ of the offshore installation and must contain:

- 1273 (1) a description of the offshore installation from which the discharge is to take place, including the location of the offshore installation;
- 1274 (2) a description of the oil to which the application relates and of the circumstances in which it is to be discharged; and
- 1275 (3) a description of the measures planned to monitor the discharge in relation to which a permit is sought¹².

For the purpose of considering such an application, the Secretary of State may by notice in writing require the operator to provide such other information as may be specified in the notice¹³.

Where the Secretary of State receives an application for a permit, he may either grant or refuse it¹⁴. There is a right of appeal to the High Court against such a refusal¹⁵.

The Secretary of State may attach conditions to any permit granted by him which are calculated to ensure that:

- 1276 (a) the concentration, frequency, quantity, location or duration of any discharge is subject to appropriate restrictions;
- 1277 (b) appropriate measures are taken to minimise pollution¹⁶ including, in particular, the appropriate use of technology to limit discharges;
- 1278 (c) necessary measures are taken to prevent accidents affecting the environment or, where they occur, to limit their consequences in relation to the environment;
- 1279 (d) there is carried out appropriate monitoring of the discharges to which the permit relates, and such conditions may include:

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- 93. (i) provisions relating to measurement techniques, the frequency of measurement and evaluation procedures; and

94. (ii) obligations to supply the Secretary of State with data required for checking compliance with the permit, including any data setting out the actual concentration, frequency, quantity, location or duration of any discharges which have occurred during a specified period¹⁷.

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In addition to any conditions that may be attached to any permit by virtue of heads (a) to (d) above, the Secretary of State may attach to a permit such other conditions as he thinks fit¹⁸.

A permit must specify the period for which it is to have effect¹⁹, and a fee may be charged for the grant of a permit²⁰ or for its subsistence²¹.

1 le subject to the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 3(2), (3): reg 3(1). There are exempt from the requirement for a permit under the 2005 Regulations discharges regulated by (1) the Offshore Chemicals Regulations 2002, SI 2002/1355 (see PARA 595 et seq); (2) the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (see PARA 365 et seq); or (3) the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1998, SI 1998/1377 (revoked) (see now Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, SI 2008/3257) (see PARA 572): Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 3(2). Where a person is carrying on a discharge of oil to which an existing exemption applies, reg 3(1) does not apply in respect of that discharge until (a) such time as the Secretary of State may specify by notice in writing to that person; or (b) if no notice is given by the Secretary of State in accordance with head (a) above, the date after the day on which the period of two years commencing on the date the 2005 Regulations came into force (ie 20 August 2005: see reg 1) expired: see reg 3(3). 'Existing exemption' means an exemption granted by the Secretary of State pursuant to the Prevention of Oil Pollution Act 1971 s 23 (see PARA 356) being an exemption which was in force on the day before 20 August 2005: Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 2.

A written document may be sent, given or issued to the intended recipient by (i) delivering it to him; or (ii) leaving it at his proper address; or (iii) sending it by post to him at that address (reg 17(2)); and 'written document' includes an application, a permit, information, data, evidence, a representation or a notice under the 2005 Regulations or a copy thereof (reg 17(1)). A written document may be sent, given or issued (A) to a body corporate by being sent, given or issued to its secretary or clerk; (B) to a firm (including a Scottish partnership) by being sent, given or issued to a partner in the firm or to a person having management or control of the partnership business; (C) to an unincorporated body by being sent, given or issued to a member of its governing body: reg 17(3). For these purposes, and the purposes of the Interpretation Act 1978 s 7 in its application to this provision, the proper address (except in a case falling within the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 17(7)) of: (aa) the Secretary of State is the address of the principal office of the holder of the office of Secretary of State who for the time being exercises the functions of the Secretary of State under the 2005 Regulations; (bb) a body corporate is the address of its registered or principal office; (cc) a firm (including a Scottish partnership) or unincorporated body is the address of its principal office; (dd) any other person is his last known address: reg 17(4). Where, by virtue of the above provisions, the proper address of the intended recipient of a written document is outside the United Kingdom, references in reg 17 to the proper address of a body corporate, firm or unincorporated body include its principal office (if any) in the United Kingdom; and references to the proper address of any other person include his last known address in the United Kingdom unless he is known no longer to have an address in the United Kingdom: reg 17(5). If the person to whom a written document is to be sent, given or issued has furnished the person by whom the written document is to be sent, given or issued with an address pursuant to any provision of the 2005 Regulations, that address must also be treated for these purposes as his proper address: reg 17(6). Where a written document is to be sent, given or issued by means of an electronic communication, the proper address of any person includes the number or address which he has indicated is to be used by him for receipt of the communication: reg 17(7). 'Electronic communication' means a communication transmitted either by means of an electronic communications network or by other means but while in electronic form: reg 17(1). Regulation 17 is without prejudice to any other lawful method of giving or serving notice: reg 17(8).

2 For these purposes, 'oil' means any liquid hydrocarbon or substitute liquid hydrocarbon, including dissolved or dispersed hydrocarbons or substitute hydrocarbons that are not normally found in the liquid phase at standard temperature and pressure, whether obtained from plants or animals, or mineral deposits or by synthesis: Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 2.

3 'Discharge', in relation to oil, means its release from an offshore installation; and 'offshore installation' has the same meaning as in the Petroleum Act 1998 s 44 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1729 note 4): Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 2.

4 For these purposes, 'relevant waters' has the same meaning as in the Petroleum Act 1998 s 44 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1729 note 4) save that it (1) does not include Scottish controlled waters; and (2) includes places below relevant waters; and 'Scottish controlled waters' means any waters which are controlled waters within the meaning of the Control of Pollution Act 1974 s 30A(1): Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 2.

5 Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 3(1). The Prevention of Oil Pollution Act 1971 ss 1, 2, 3, 6, 23 (see PARA 348 et seq) do not apply to discharges of oil which are regulated by a permit granted under the 2005 Regulations: Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 18(1).

6 See the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(1)(a); and PARA 594.

7 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

8 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 3(4).

9 See the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(1)(d); and PARA 594.

10 See note 1.

11 'Operator' means any person who operates an offshore installation: Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 2.

12 Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 5(1).

13 Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 5(2).

14 Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 4(1).

15 See the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 15; and PARA 593.

16 'Pollution' means the introduction by man, directly or indirectly, of substances or energy into relevant waters which results, or is likely to result, in hazards to human health, harm to living resources and marine ecosystems, damage to amenities or interference with other legitimate uses of the sea: Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 2.

17 Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 4(2).

18 Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 4(4).

19 Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 4(3).

20 See the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 6(1), (2)(a). The Secretary of State may, in accordance with a charging scheme made by him for this purpose, charge operators fees in respect of any of the matters to which reg 6(1) applies: reg 6(1). As to those matters see reg 6(2)(a)-(h); note 21; and PARAS 587-590. A charging scheme made under reg 6 must be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure as may be incurred by or on behalf of the Secretary of State in connection with any of the matters to which reg 6(1) applies: reg 6(3).

21 See the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 6(2)(e); and note 20.

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587. Variation of permit terms and conditions.

The Secretary of State¹ may, whenever he thinks fit, review the terms and conditions attached to any permit². A permit holder³ may apply in writing⁴ for a variation of the terms and conditions of a permit⁵ and when an application is so made the Secretary of State must review the terms and conditions attached to the permit in question⁶.

Where, having conducted a review in accordance with the above provisions, the Secretary of State considers that the terms and conditions of a permit should be varied, he must give notice⁷ to the permit holder in writing of his intention to vary those terms and conditions⁸. Such a notice must provide details of the proposed variation and specify the date (the 'relevant date') on which the proposed variation is to take effect⁹. Where the Secretary of State proposes to vary the terms and conditions of a permit otherwise than in accordance with an application made by the permit holder:

- 1280 (1) the relevant date must be not less than 14 days after the date on which notice is given of the intention to make the variation¹⁰;
- 1281 (2) the permit holder is entitled to make representations in writing as to whether, and if so how, the terms and conditions should be varied;
- 1282 (3) where no such representations are received prior to the relevant date, the variation has effect on that date; and
- 1283 (4) where representations under head (2) above are received prior to the relevant date, the Secretary of State must consider them in determining whether or not to vary the terms and conditions as originally notified¹¹, and may determine that revised terms and conditions are to come into effect on a date later than the relevant date¹².

Where an application for variation is made by the permit holder¹³ and the Secretary of State decides not to vary the terms and conditions of the permit in question, he must give notice in writing of his decision to the permit holder¹⁴.

A fee may be charged for the variation of a permit or of the conditions to which it is subject¹⁵.

¹ As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

² Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 7(1).

³ 'Permit holder' means the holder from time to time of a permit granted under the 2005 Regulations: Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 2.

⁴ As to the use of electronic communications see PARA 586 note 1.

⁵ Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 7(2).

⁶ Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 7(1).

⁷ As to the service of notices see PARA 586 note 1.

8 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 7(3).

9 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 7(4).

10 Ie pursuant to the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 7(3): see the text and notes 7-8.

11 See note 10.

12 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 7(5).

13 Ie under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 7(2): see the text and notes 3-5.

14 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 7(6).

15 See the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 6(1), (2)(b). As to the power to make a charging scheme for fees see PARA 586 note 20.

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588. Assignment of permits.

Where a permit holder¹ wishes to assign his permit to another person (the 'proposed assignee'), the permit holder and the proposed assignee must each make an application to the Secretary of State² to effect the assignment³; and the Secretary of State must effect the assignment provided he is satisfied that the proposed assignee will become the operator⁴ of the installation to which the permit relates after the assignment is effected⁵. He may, by notice⁶, require the permit holder or the proposed assignee to furnish such further information specified in the notice, within the period so specified, as he may require for the purpose of determining such an application⁷.

The Secretary of State must effect such an assignment by causing the permit to be indorsed with the name and other particulars of the proposed assignee as the permit holder⁸. A fee may be charged for the assignment of a permit⁹.

1 As to the meaning of 'permit holder' see PARA 587 note 3.

2 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

3 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 8(1).

4 As to the meaning of 'operator' see PARA 586 note 11.

5 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 8(2).

6 As to the service of notices see PARA 586 note 1.

7 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 8(4).

8 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 8(3).

9 See the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 6(1), (2)(c). As to the power to make a charging scheme for fees see PARA 586 note 20.

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589. Revocation and surrender of permits.

The Secretary of State¹ may by notice in writing² revoke a permit granted pursuant to the relevant regulations³ where he is of the opinion that:

1284 (1) any application made under those regulations in connection with that permit contained or was supported by any information or statement which was false or misleading in a material particular; or

1285 (2) any person has been guilty of a breach of any term or condition attached to the permit⁴.

A permit holder⁵ may surrender his permit by notice in writing to the Secretary of State⁶.

A fee may be charged for the revocation or surrender of a permit⁷.

¹ As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

² As to the service of notices see PARA 586 note 1.

³ ie under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055. As to the granting of permits see PARA 586.

⁴ Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 9(1).

⁵ As to the meaning of 'permit holder' see PARA 587 note 3.

⁶ Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 9(2).

⁷ See the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 6(1), (2)(d). As to the power to make a charging scheme for fees see PARA 586 note 20.

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590. Inspectors.

The Secretary of State¹ may, if he thinks fit, appoint one or more inspectors:

- 1286 (1) to investigate whether the requirements, restrictions or prohibitions imposed by or under the relevant regulations² have been, or are being complied with; or
- 1287 (2) to monitor any discharge³ of oil⁴;

and the inspectors must report to the Secretary of State in such manner as he may direct⁵.

An inspector so appointed may, for any of the purposes mentioned in heads (1) and (2) above and on producing evidence of his appointment:

- 1288 (a) at any reasonable time (or, in a situation which in his opinion may give rise to a risk of significant pollution⁶ as a result of the discharge of oil, at any time) board any offshore installation⁷;
- 1289 (b) on boarding an offshore installation, take with him any other person authorised by the Secretary of State for the purposes mentioned in heads (1) and (2) above and any equipment or materials that he thinks he may require;
- 1290 (c) make such examination or investigation as he considers necessary (including any examination or investigation of the offshore installation or of the maintenance or monitoring of apparatus on the offshore installation);
- 1291 (d) give a direction requiring that any part of the offshore installation be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any such examination or investigation;
- 1292 (e) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any such examination or investigation;
- 1293 (f) take samples of any articles or substances found on the offshore installation or take samples of the atmosphere, land, sea bed (including the subsoil thereof) or water in the vicinity of the offshore installation;
- 1294 (g) in the case of any article or substance which he finds on the offshore installation, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless, in the circumstances of the case, that is necessary);
- 1295 (h) in the case of any such article or substance as is mentioned in head (g) above, take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely:

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- 95. (i) to examine it and do to it anything which he has power to do under that provision;
- 96. (ii) to ensure that it is not tampered with before his examination of it is completed; and
- 97. (iii) to ensure that it is available for use as evidence in any proceedings relating to an offence under the relevant regulations⁸;

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1296 (i) require any person whom he has reasonable cause to believe is able to give any information relevant to any examination or investigation under head (c) above:

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98. (i) to attend at a place and time specified by the inspector;

99. (ii) to answer (in the absence of any person other than persons whom the inspector may allow to be present and a person nominated to be present by the person upon whom the requirement is imposed) such questions as the inspector thinks fit to ask; and

100. (iii) to sign a declaration as to the truth of his answers⁹;

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1297 (j) require the production of, and inspect and take copies of:

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101. (i) any records which by virtue of any provision of any permit granted under the relevant regulations are required to be kept; and

102. (ii) any records which he considers it necessary for him to see for the purposes of any examination or investigation under head (c) above¹⁰; and

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1298 (k) require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by these provisions¹¹.

A fee may be charged for the testing or analysis of substances, the validating of, or of the results of, any testing or analysis of substances and the assessment of the effect upon the environment of the release into it of any oil; but only in cases where the testing, analysis, validating or assessment is in any way in anticipation of, or otherwise in connection with, the making of permit applications or is carried out in pursuance of conditions to which the permit is subject¹².

It is an offence wilfully to obstruct an inspector, or to fail, without reasonable excuse, to comply with a requirement imposed in pursuance of heads (a) to (k) above¹³.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 I.e. under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055: see PARAS 586-589, PARA 591 et seq.

3 As to the meaning of 'discharge' see PARA 586 note 3.

4 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12(1). As to the meaning of 'oil' for these purposes see PARA 586 note 2.

5 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12(2).

6 As to the meaning of 'pollution' for these purposes see PARA 586 note 16.

7 As to the meaning of 'offshore installation' see PARA 586 note 3.

8 I.e. an offence under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055. As to such offences see reg 16; and PARA 594.

9 An answer given by a person in compliance with a requirement imposed under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12(3)(i) (see head (i) in the text) is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings or, in Scotland, against that person in criminal proceedings: reg 12(4). In criminal proceedings in which such person as is mentioned in reg 12(4) is charged with an offence to which reg 12(5) applies no evidence relating to that person's answer may be adduced and no questions relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person: reg 12(5). Regulation 12(5)

applies to any offence other than one under: (1) reg 16(1)(g)(ii) (see PARA 594); (2) the Perjury Act 1911 s 5 (false statements made otherwise than on oath) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 717); (3) the corresponding provisions under the law of Scotland or Northern Ireland: see the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12(6).

10 Nothing in the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12 is to be taken to compel the production by any person of a document of which he would, on grounds of legal professional privilege, be entitled to withhold production on an order for disclosure or discovery in a claim in the High Court or in the High Court in Northern Ireland or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session: reg 12(7).

11 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12(3).

12 See the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 6(1), (2)(f)-(h). As to the power to make a charging scheme for fees see PARA 586 note 20.

13 See the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(1)(e), (f); and PARA 594.

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591. Allowance trading.

The Secretary of State¹ is authorised to make:

- 1299 (1) a plan or plans for the allocation of allowances in relation to specified emissions² ('allocation plans'); and
- 1300 (2) one or more emissions trading schemes (the 'trading schemes') for the purpose of facilitating the trading of allowances allocated under the allocation plans³.

He may include in the rules of the trading schemes:

- 1301 (a) provision for penalties in respect of contraventions of the terms and conditions of the trading scheme; and
- 1302 (b) provision for the amount of any penalty under the trading scheme to be such as may be set out in or calculated in accordance with the scheme⁴.

For the purposes of the trading schemes he must establish and maintain one or more registries in which there must be recorded:

- 1303 (i) allocations of allowances;
- 1304 (ii) adjustments of such allocations;
- 1305 (iii) trades of allowances;
- 1306 (iv) transfers of allowances;
- 1307 (v) withdrawals of allowances; and
- 1308 (vi) surrenders of allowances⁵.

The Dispersed Oil in Produced Water Trading Scheme commenced on 1 January 2006.

¹ As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

² For these purposes, 'emission' means the direct or indirect release of substances from individual or diffuse sources into the air or into relevant waters: Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 2. As to the meaning of 'relevant waters' see PARA 586 note 4.

³ Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 10(1).

⁴ Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 10(2).

⁵ Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 11.

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592. Enforcement and prohibition notices.

If the Secretary of State¹ is of the opinion that any person has contravened or is contravening any condition of a permit or is likely to contravene any such condition, either the Secretary of State or an inspector appointed by him² may serve on the permit holder³ a notice in writing⁴ (an 'enforcement notice') which:

- 1309 (1) states that the Secretary of State is of that opinion;
- 1310 (2) specifies the matters which constituted, constitute or, as the case may be, are likely to constitute the contravention;
- 1311 (3) specifies the steps that must be taken to remedy or, as the case may be, to prevent the contravention, including steps that must be taken to remedy any pollution⁵ caused by the contravention; and
- 1312 (4) specifies the period within which those steps must be taken⁶.

This does not, however, apply where the permit condition in question relates exclusively to one or more of the trading schemes⁷.

Where a person to whom an enforcement notice is addressed has failed to take the action required by it within such time as may be specified by it and such a notice has not been revoked⁸, the Secretary of State may himself undertake any action so required and the reasonable costs and expenses of his so doing are recoverable as a debt from that person⁹. A person to whom an enforcement notice is addressed must afford such assistance as the Secretary of State may reasonably require for the purpose of facilitating the exercise of any powers so conferred on him¹⁰.

The exercise by the Secretary of State of any power conferred by the above provisions is without prejudice to the exercise by him of any other power under any other provision¹¹ of the relevant regulations¹².

If the Secretary of State is of the opinion that the operation of an offshore installation¹³ involves an imminent risk of serious pollution as a consequence of any discharge of oil¹⁴, the Secretary of State or an inspector appointed by him¹⁵ may serve a notice in writing (a 'prohibition notice') on the permit holder¹⁶. A prohibition notice may be served whether or not the risk relates to the contravention of a permit granted under the relevant regulations, and may relate to any aspects of the operation of an offshore installation whether or not regulated by the conditions of such a permit¹⁷. A prohibition notice:

- 1313 (a) must state that the Secretary of State is of the opinion mentioned above;
- 1314 (b) must specify the risk involved in the operation of the offshore installation;
- 1315 (c) must specify the steps that must be taken to remove it and the period within which they must be taken; and
- 1316 (d) may direct that any permit granted under the relevant regulations is, until the notice is withdrawn wholly or in part¹⁸, to cease to have effect; and where the direction applies to part only of the operation of the offshore installation, it may

impose conditions to be observed in carrying on that part of the operation which is authorised under the relevant permit¹⁹.

It is the duty of the person to whom the prohibition notice is addressed to comply with its terms save to the extent that it is withdrawn wholly or in part²⁰.

The service of a prohibition notice is without prejudice to the exercise by any person of any power under any other provision of the relevant regulations²¹.

Failure to comply with the terms of an enforcement or a prohibition notice is an offence²².

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 Ie an inspector appointed under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12: see PARA 590.

3 As to the meaning of 'permit holder' see PARA 587 note 3.

4 As to the service of notices see PARA 586 note 1.

5 As to the meaning of 'pollution' see PARA 586 note 16.

6 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 13(1), (3).

7 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 13(2). As to the trading schemes see PARA 591.

8 The Secretary of State or an inspector appointed by him under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12 may revoke an enforcement notice served under reg 13(1): reg 13(6).

9 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 13(4).

10 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 13(5).

11 Ie any other provision of the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055: see PARA 586 et seq, the text and notes 13-21; and PARAS 593-594.

12 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 13(7).

13 As to the meaning of 'offshore installation' for these purposes see PARA 586 note 3.

14 As to the meaning of 'oil' for these purposes see PARA 586 note 2.

15 See note 2.

16 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 14(1).

17 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 14(2).

18 The Secretary of State or an inspector appointed by him under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12 may by notice withdraw a prohibition notice wholly or in part at any time and must withdraw a notice when the Secretary of State is satisfied that the steps required by the notice have been taken: reg 14(4).

19 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 14(3).

20 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 14(5).

21 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 14(6).

22 See the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(1)(b); and PARA 594.

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593. Appeals to the High Court.

Any applicant for a permit, any permit holder¹ or any person the subject of a decision by the Secretary of State² under the relevant regulations³, who is aggrieved by his decision may appeal to the court⁴. Such an appeal must be made within 28 days of written notification⁵ of the decision in question⁶.

Unless the court otherwise orders, any decision of the Secretary of State which is the subject of such an appeal remains in force pending a final disposal of that appeal⁷.

1 As to the meaning of 'permit holder' see PARA 587 note 3.

2 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

3 le under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055: see PARA 586 et seq.

4 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 15(2). Subject to reg 15(4), 'court' means (1) in respect of a decision relating to the discharge of oil in the English area, the High Court; (2) in respect of a decision relating to the discharge of oil in the Scottish area (excluding Scottish controlled waters), the Court of Session; and (3) in respect of a decision relating to the discharge of oil in the Northern Irish area, the High Court in Northern Ireland: reg 15(3). Where oil is discharged or is to be discharged in more than one of the areas referred to in reg 15(1) (excluding Scottish controlled waters), any of the courts having jurisdiction in the area or areas where oil is discharged or is to be discharged has jurisdiction in relation to the decision in question: reg 15(4). For these purposes, 'English area', 'Scottish area' and 'Northern Irish area' have the same meanings as in the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1656 note 6): Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 15(1). As to the meanings of 'oil', 'discharge' and 'Scottish controlled waters' see PARA 586 notes 2-4.

5 As to the service of notices see PARA 586 note 1.

6 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 15(6).

7 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 15(5).

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594. Offences.

Subject to certain exceptions¹, a person is guilty of an offence if he:

- 1317 (1) contravenes the prohibition on the discharge of oil into relevant waters without a permit²;
- 1318 (2) fails to comply with the terms of an enforcement notice or a prohibition notice³;
- 1319 (3) fails to supply any information required to be supplied by virtue of the terms or conditions of any permit granted under the relevant regulations⁴;
- 1320 (4) fails to supply any information required to be supplied by virtue of the specified provision⁵;
- 1321 (5) wilfully obstructs an inspector appointed by the Secretary of State⁶;
- 1322 (6) without reasonable excuse, fails to comply with a requirement imposed by an inspector⁷, or prevents another person from complying with such a requirement;
- 1323 (7) knowingly or recklessly makes a statement which he knows to be false or misleading in a material particular where such a statement:

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- 103. (a) is made in connection with, or for the purposes of, any application for a permit, the renewal of a permit, the variation of a permit⁸ or the assignment of a permit⁹; or

- 104. (b) is made for the purposes of satisfying any requirement under the relevant regulations for the supply of information to the Secretary of State or an inspector appointed by him¹⁰.

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Where a person is charged with an offence under any of heads (1) to (4) above, it is a defence to prove that the contravention or failure:

- 1324 (i) arose as a result of something which could not reasonably have been prevented by him; or
- 1325 (ii) was due to something done as a matter of urgency for the purpose of securing the safety of any person¹¹;

but a person does not have the defence provided by head (ii) above if the court is satisfied:

- 1326 (A) that the thing done was not necessary for the purpose mentioned in that head and was not a reasonable step to take in the circumstances; or
- 1327 (B) that it was necessary for the purpose mentioned in that head but the necessity was due to the fault of the defendant¹².

Proceedings for an offence under these provisions may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom¹³.

A person guilty of an offence under these provisions is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine¹⁴.

Where such an offence by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly¹⁵; and where the affairs of a body corporate are managed by its members, the above provision applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate¹⁶.

Where the commission by any person of an offence under the above provisions is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person¹⁷.

1 le subject to the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(2), (4): see note 2; and the text and notes 3-11.

2 le contravenes the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 3(1): see PARA 586. The discharge of oil into relevant waters in contravention of any one or more of the terms of or conditions attached to a permit does not, however, constitute an offence for the purpose of reg 16 where the term or condition in question relates exclusively to one or more of the trading schemes: reg 16(4). As to the meanings of 'oil', 'discharge' and 'relevant waters' see PARA 586 notes 2-4; and as to the trading schemes see PARA 591.

3 As to enforcement and prohibition notices see PARA 592.

4 le granted under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055: see PARA 586 et seq.

5 le by virtue of the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 3(4): see PARA 586.

6 le an inspector appointed under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12: see PARA 590. As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

7 le imposed in pursuance of the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 12(3): see PARA 590.

8 As to the variation of permits see PARA 587.

9 As to the assignment of permits see PARA 588.

10 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(1). As to the meaning of 'recklessly' in the context of the criminal law see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 11.

11 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(2).

12 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(3).

13 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(9). The Territorial Waters Jurisdiction Act 1878 s 3 (restriction on prosecutions) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1056) does not apply to any proceedings for an offence under the Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16: reg 16(10).

14 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(5). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

15 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(6).

16 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(7).

17 Offshore Petroleum Activities (Pollution Prevention and Control) Regulations 2005, SI 2005/2055, reg 16(8).

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(C) RESTRICTIONS ON DISCHARGE OF CHEMICALS FROM OFFSHORE INSTALLATIONS

595. Requirement for permit to use or discharge offshore chemicals; permit applications and grant of permits.

Subject to certain exceptions¹, no person may use² or discharge³ any offshore chemical⁴ in the relevant area⁵ after the prescribed date⁶ otherwise than in accordance with the terms of, and conditions attached to, a permit⁷. Contravention of this provision is an offence⁸.

A permit application⁹ must be made in writing¹⁰ and must contain:

- 1328 (1) a description of the offshore installation¹¹ on or from which the offshore chemical is to be used or discharged, and the location of the offshore installation in the relevant area;
- 1329 (2) a description of the proposed technology and other techniques for preventing or, where prevention is not possible, reducing the use or discharge of the offshore chemical from the offshore installation;
- 1330 (3) a description of the measures planned to monitor the use or discharge of the offshore chemical; and
- 1331 (4) an assessment of the risk of harm to the environment from the use and discharge of the offshore chemicals proposed¹².

The Secretary of State¹³ may by notice¹⁴ require a permit applicant either to produce such evidence as he may reasonably call for to verify any information provided in the permit application or to provide such other information as he may specify for the purposes of properly considering a permit application in accordance with the relevant regulations¹⁵.

Except where the permit application is one which is made:

- 1332 (a) in connection with a relevant project¹⁶ for which the Secretary of State gives a direction¹⁷ that no environmental statement¹⁸ need be prepared;
- 1333 (b) in connection with a discharge from a pipeline¹⁹, being a discharge to which the Secretary of State gives a consent pursuant to an authorisation issued under Part III of the Petroleum Act 1998²⁰; or
- 1334 (c) in connection with activities carried out in accordance with an abandonment programme approved by the Secretary of State under Part IV of that Act²¹,

a permit applicant must:

- 1335 (i) having regard to the general whereabouts of any persons likely to be interested in, or affected by, the use or discharge of any chemical to which the permit application relates, make a copy of the permit application available for public inspection at an address in the United Kingdom²² between the hours of 10

- am and 4 pm on business days²³ for a period of not less than four weeks immediately following the publication (or last publication, where it is published in more than one newspaper or on more than one occasion) of the notice referred to in head (iv) below;
- 1336 (ii) make available at an address within the United Kingdom enough copies of the permit application to be likely to satisfy all reasonable demands for copies pursuant to head (iii) below;
- 1337 (iii) supply during the period mentioned in head (i) above a copy of the permit application²⁴;
- 1338 (iv) publish in such newspapers on such occasions as to be likely to come to the attention of any persons likely to be interested in, or affected by, the use or discharge of any chemical to which the permit application relates, a notice which contains the prescribed information²⁵; and
- 1339 (v) provide the Secretary of State with copies of the newspapers in which the notice referred to in head (iv) above appeared²⁶.

The Secretary of State may not grant a permit unless he is satisfied that there has been substantial compliance with heads (i) to (v) above²⁷. In considering whether to grant a permit, the Secretary of State must have regard to any opinion expressed by the consultation parties²⁸. Except where the permit application is one to which head (a), head (b) or head (c) above applies, he must also have regard to any opinion expressed by the general public²⁹. Where the Secretary of State grants a permit, he must send it to the permit applicant³⁰; and where he refuses a permit application, he must give notice of such refusal to the permit applicant³¹. The Secretary of State must publish in the Gazettes³² notice of the granting of any permit³³.

The Secretary of State may attach to any permit such conditions as he thinks fit³⁴; and may, without prejudice to the generality of that provision, attach to any permit such conditions as in his opinion are calculated to ensure that:

- 1340 (A) the quantity, frequency, location and duration of any permitted use or discharge of offshore chemicals are subject to appropriate restrictions;
- 1341 (B) any permit granted for the use or discharge of any offshore chemical requires the operator to seek a suitable, less hazardous substitute;
- 1342 (C) all appropriate measures are taken to prevent pollution³⁵ in particular through the appropriate use of technology to limit discharge, emissions and waste;
- 1343 (D) necessary measures are taken to prevent accidents affecting the environment or, where they occur, to limit their consequences in relation to the environment;
- 1344 (E) the appropriate monitoring of the use and discharge of offshore chemicals is facilitated, and such conditions may include provisions relating to measurement techniques, technology and frequency and to evaluation procedures and obligations to supply the Secretary of State with data required for checking compliance with the permit, including any data setting out the actual quantity, frequency and location of the use and discharge of any offshore chemicals which has occurred during a specified period;
- 1345 (F) long-distance or transboundary pollution is minimised; and
- 1346 (G) appropriate measures are taken in relation to conditions other than normal operating conditions including start-ups, leaks, malfunctions, temporary stoppages and permanent cessation of operations³⁶.

A permit may be granted for a period specified in it or without limit of time³⁷.

A fee may be charged for the grant of a permit³⁸ or with regard to its subsistence³⁹. There is a right of appeal to the High Court against a refusal to grant a permit⁴⁰.

1 be subject to the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 3(2), (3): reg 3(1). Where a person is using or discharging any offshore chemical in connection with any offshore activity that began on or before 15 May 2002 (ie the date on which the 2002 Regulations came into force: see reg 1), that person may continue to use or discharge that offshore chemical until (1) such time as the Secretary of State may specify by notice; or (2) if no notice is given by the Secretary of State in accordance with head (1) above, the date after the day on which the period of two years commencing on the prescribed date expired: reg 3(2). 'Prescribed date' means the date after the day on which the period of three months commencing on 15 May 2002 expired, save that when a permit application was made before that date it means (a) the date on which the permit was granted, whether in pursuance of the application or, on an appeal under reg 17 (see PARA 603), of an order of the court; or (b) where a permit was refused and the permit applicant appealed under reg 17, the date on which the court upheld that refusal; or (c) the date after the day on which the period provided for under reg 17(6) expired, as the case may be: see reg 2. A person using or discharging an offshore chemical in accordance with reg 3(2) must provide the Secretary of State with such information as the Secretary of State may reasonably require for the purpose of performing his functions under the 2002 Regulations: reg 3(3). Failure to do so is an offence: see reg 18(1)(c); and PARA 604. As to the meanings of 'use', 'discharge' and 'offshore chemical' see notes 2-4.

'Notice' means notice in writing: reg 2. A written document may be sent, given or issued to the intended recipient by (i) delivering it to him; or (ii) leaving it at his proper address; or (iii) sending it by post to him at that address: reg 19(2) (reg 19 substituted by SI 2005/2055). 'Written document' includes an application, a permit, information, data, evidence, a representation or a notice under the 2002 Regulations: Offshore Chemicals Regulations 2002, SI 2002/1355, reg 19(1) (as so substituted). A written document may be sent, given or issued: (A) to a body corporate by being sent, given or issued to its secretary or clerk; (B) to a firm (including a Scottish partnership) by being sent, given or issued to a partner in the firm or to a person having management or control of the partnership business; (C) to an unincorporated body by being sent, given or issued to a member of its governing body: reg 19(3) (as so substituted). For these purposes, and for the purposes of the Interpretation Act 1978 s 7 in its application to this provision, the proper address (except in a case falling within the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 19(7)) of (aa) the Secretary of State is the address of the principal office of the holder of the office of Secretary of State who for the time being exercises the functions of the Secretary of State under the 2002 Regulations; (bb) a body corporate is the address of its registered or principal office; (cc) a firm (including a Scottish partnership) or unincorporated body is the address of its principal office; (dd) any other person is his last known address: reg 19(4) (as so substituted). Where, by virtue of reg 19(1)-(4), the proper address of the intended recipient of a written document is outside the United Kingdom, references in reg 19 to the proper address of a body corporate, firm or unincorporated body include its principal office (if any) in the United Kingdom; and references to the proper address of any other person include his last known address in the United Kingdom (unless he is known no longer to have an address in the United Kingdom): reg 19(5) (as so substituted). If the person to whom a written document is to be sent, given or issued has furnished the person by whom the written document is to be sent, given or issued with an address pursuant to any provision of the 2002 Regulations, that address is also to be treated for these purposes as his proper address: reg 19(6) (as so substituted). Where a written document is to be sent, given or issued by means of an electronic communication, the proper address of any person includes the number or address which he has indicated is to be used by him for receipt of the communication (reg 19(7) (as so substituted)); and 'electronic communication' means a communication transmitted either by means of an electronic communications network or by other means but while in electronic form (reg 19(1) (as so substituted)). Regulation 19 is without prejudice to any other lawful method of giving or serving notice: reg 19(8) (as so substituted).

2 'Use', in relation to offshore chemicals, means any application in connection with offshore activities that might result in a discharge: Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2.

3 'Discharge' means the operational release of offshore chemicals, or their degradation and transformation products, from an offshore installation into the relevant area: Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2. 'Relevant area' means that area (together with places above and below it) comprising (1) those parts of the sea adjacent to England and Wales from the low-water mark to the landward baseline of the United Kingdom territorial sea; (2) the United Kingdom territorial sea apart from those areas comprised in Scottish controlled waters; and (3) those areas of sea in any area for the time being designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636); and 'Scottish controlled waters' means any waters which are controlled waters within the meaning of the Control of Pollution Act 1974 s 30A(1) (s 30A applies to Scotland only and is outside the scope of this work): Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2. As to the meaning of 'offshore installation' see note 11; and generally as to the territorial sea of the United Kingdom see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

4 'Offshore chemical' means any chemical, whether comprising a substance or a preparation, intentionally used in connection with offshore activities; 'substance' means a chemical element or compound, in the natural state or obtained by any production process, including any additive necessary to preserve the stability of the product or any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition; 'preparation' means a mixture or

solution composed of two or more substances; and 'offshore activities' means any activities in respect of which the Secretary of State exercises functions under the Petroleum Act 1998, being activities carried out in the relevant area: Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2.

5 See note 3.

6 See note 1.

7 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 3(1). 'Permit' means an authorisation granted by the Secretary of State pursuant to the 2002 Regulations to use or discharge any offshore chemical in the relevant area: reg 2.

8 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(1)(a); and PARA 604.

9 'Permit application' means an application for a permit, being an application which satisfies the requirements of the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 6(1) (see heads (1)-(4) in the text); and 'permit applicant' is to be construed accordingly: reg 2.

10 As to the use of electronic communications see note 1.

11 For these purposes, 'offshore installation' means any structure or other thing (including any floating production storage and off-loading system or floating storage unit, but not including a ship) in the relevant area which is used for the purposes of, or in connection with, offshore activities (as to which see note 4): Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2.

12 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 6(1).

13 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

14 In notice in writing: see note 1.

15 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 6(2).

16 As to the meaning of 'relevant project' see PARA **FUEL AND ENERGY** vol 19(3) (2007 Reissue) 1645 note 2; definition applied by the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2.

17 In pursuant to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 6: see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1647.

18 As to the meaning of 'environmental statement' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1646 note 8.

19 For these purposes, 'pipeline' has the same meaning as in the Petroleum Act 1998 s 26 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1741): Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2.

20 In under the Petroleum Act 1998 Pt III (ss 14-28): see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1740 et seq.

21 In under the Petroleum Act 1998 Pt IV (ss 29-45): see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1729 et seq.

22 As to the meaning of 'United Kingdom' see PARA 1 note 2.

23 'Business day' means any day, except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom by virtue of the Banking and Financial Dealings Act 1971: Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2.

24 Where a permit applicant is subject to an obligation to supply a copy of a permit application pursuant to a request made under the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 7(1)(c) (see head (iii) in the text): (1) he must supply a copy of the permit application to the person requesting it as soon as reasonably practicable after receipt of the request; and (2) he may make the supply of a copy of the permit application conditional on the receipt by the permit applicant of a sum calculated by reference to the cost of printing and distributing copies of the permit application, subject to a maximum of £10 for each copy requested: reg 7(3).

25 The notice must: (1) describe the permit application; (2) give the address referred to in the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 7(1)(a) (see head (i) in the text) at which a copy of the permit application may be inspected; (3) state that a copy of the permit application may be obtained from the address

referred to in reg 7(1)(b) (see head (ii) in the text) and, subject to reg 7(3)(b) (see note 24 head (2)) specify the amount of any payment required to be tendered for a copy of the permit application; and (4) state a date not less than four weeks after the date on which the notice is to be last published by which any person may make representations in relation to the permit application to the Secretary of State and specify the address to which any such representations are to be sent: see reg 7(1)(d)(i)-(iv).

26 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 7(1), (2).

27 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 4(2).

28 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 4(1)(a). 'Consultation parties' means, having regard to the part of the relevant area to which any permit would relate: (1) the Centre for Environment, Fisheries and Aquaculture Science; (2) the Fisheries Research Services; together with any contracting state which the Secretary of State considers may be affected by the use or discharge of any offshore chemical to which an application under the 2002 Regulations relates; and 'contracting state' means a state which the Secretary of State considers to be a contracting party to the Convention for the Protection of the Marine Environment of the North-East Atlantic 1992 (the 'OSPAR Convention') (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1632): Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2.

29 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 4(1)(b).

30 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 4(3).

31 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 4(4).

32 'Gazettes' means the London, Edinburgh and Belfast Gazettes: Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2.

33 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 4(5).

34 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 5(1).

35 For these purposes, 'pollution' means the introduction by man, directly or indirectly, of substances or energy into the relevant area which results, or is likely to result, in hazards to human health, harm to living resources and marine ecosystems, damage to amenities or interference with other legitimate uses of the sea: Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2.

36 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 5(2).

37 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 9.

38 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 8(1), (2)(a). The Secretary of State may, in accordance with a charging scheme made by him for this purpose, charge operators fees in respect of any of the matters to which reg 8(2) applies: reg 8(1). As to those matters see note 39; and PARAS 597, 599. 'Operator' means any person who operates an offshore installation: reg 2. A charging scheme made under reg 8 must be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure as may be incurred by or on behalf of the Secretary of State in connection with any of the matters to which reg 8(1) applies: reg 8(3).

39 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 8(2)(d).

40 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 17; and PARA 603.

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596. Application for renewal of an existing permit.

Where an operator¹ proposes to continue to use² or discharge³ from an offshore installation⁴ an offshore chemical⁵ after the expiry of any period specified in the permit⁶, he may apply to the Secretary of State⁷ to renew the permit⁸. Such an application must be made in writing⁹ prior to, but no more than three months before, the expiry of the permit in question¹⁰.

The Secretary of State may renew a permit pursuant to such an application, provided that he has consulted the consultation parties¹¹ and taken into account any relevant representations made by them regarding the application¹². Where he so grants an application he may make the granting of the application subject to such further terms and conditions as he thinks fit and, once a notice¹³ giving details of such further terms and conditions has been served¹⁴ on the applicant, they are to have effect¹⁵.

Where the Secretary of State refuses such an application he must serve a notice on the applicant which states that the application is refused¹⁶. There is a right of appeal to the High Court against such a refusal¹⁷.

1 As to the meaning of 'operator' see PARA 595 note 38.

2 As to the meaning of 'use' see PARA 595 note 2.

3 As to the meaning of 'discharge' see PARA 595 note 3.

4 As to the meaning of 'offshore installation' see PARA 595 note 11.

5 As to the meaning of 'offshore chemical' see PARA 595 note 4.

6 As to the meaning of 'permit' see PARA 595 note 7.

7 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

8 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 10(1).

9 As to the use of electronic communications see PARA 595 note 1.

10 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 10(2).

11 As to the meaning of 'consultation parties' see PARA 595 note 28.

12 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 10(3).

13 I.e a notice in writing: see PARA 595 note 1.

14 As to the service of notices see PARA 595 note 1.

15 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 10(5).

16 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 10(6).

17 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 17; and PARA 603.

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597. Variation of permit on application of operator.

An operator¹ may apply in writing² for a variation of the terms and conditions of a permit³ relating to the use⁴ or discharge⁵ of an offshore chemical⁶ in the relevant area⁷.

Where the Secretary of State⁸ determines that a variation applied for by the operator would not be a substantial change⁹, he may grant the application and vary the terms and conditions of the permit accordingly provided that he has taken into account any relevant representations regarding the application made by the consultation parties¹⁰. Where he so grants an application, he may make the granting of the application subject to such further conditions as he thinks fit¹¹. Where such an application is granted, the Secretary of State must issue to the applicant a notice¹² giving details of the revised terms and conditions and the revised terms and conditions are to have effect once this notice has been served¹³ on the applicant¹⁴. A fee may be charged for the variation of a permit or the conditions to which it is subject¹⁵.

Where the Secretary of State determines that the change would be a substantial change he must refuse the application and serve a notice on the applicant which states that the proposed change would, in the opinion of the Secretary of State, be a substantial change and that the application is refused¹⁶. There is a right of appeal to the High Court against such a refusal¹⁷.

1 As to the meaning of 'operator' see PARA 595 note 38.

2 As to the use of electronic communications see PARA 595 note 1.

3 As to the meaning of 'permit' see PARA 595 note 7.

4 As to the meaning of 'use' see PARA 595 note 2.

5 As to the meaning of 'discharge' see PARA 595 note 3.

6 As to the meaning of 'offshore chemical' see PARA 595 note 4.

7 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 11(1). As to the meaning of 'relevant area' see PARA 595 note 3.

8 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

9 'Substantial change' means a change in the type, quantity, frequency or location of the use or discharge of an offshore chemical which may have significant negative effects on people or the environment: Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2.

10 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 11(2). As to the meaning of 'consultation parties' see PARA 595 note 28.

11 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 11(3).

12 I.e a notice in writing: see PARA 595 note 1.

13 As to the service of notices see PARA 595 note 1.

14 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 11(5).

- 15 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 8(1), (2)(b). As to the power to make a charging scheme for fees see PARA 595 note 38.
- 16 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 11(4).
- 17 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 17; and PARA 603.

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598. Reconsideration of permits and permit conditions.

The Secretary of State¹ may at such intervals as he thinks fit review any permit² granted in accordance with the relevant regulations³, together with the conditions attached to the permit⁴; and he must review the conditions of a permit where in his opinion the pollution⁵ or risk of pollution caused by the use⁶ or discharge⁷ of an offshore chemical⁸ is of such significance that any existing restrictions on the quantity, frequency or location of the use or discharge of that offshore chemical contained in a permit should be revised or new restrictions on the quantity, frequency or location should be included in the permit⁹.

Where the Secretary of State considers that the conditions of a permit should be revised he must give notice¹⁰ to the operator¹¹ concerned of his intention to revise the permit and that notice must:

- 1347 (1) give details of the conditions of the revised permit; and
- 1348 (2) specify a day (not less than 14 days after the day on which such notice is given) on which the revised permit will have effect¹².

The operator may make representations in writing¹³ as to whether the permit should be revised and as to the conditions of the revised permit¹⁴. Where no representations are received prior to the day specified under head (2) above, the permit is to be revised with effect from that day¹⁵. Where, however, representations are received prior to that day, the Secretary of State must consider them in determining whether or not the permit should be revised as originally notified¹⁶ and may determine:

- 1349 (a) that the permit is to be revised with effect from a later day than the day specified under head (2) above; and
- 1350 (b) that the permit is to be revised otherwise than as originally notified¹⁷.

In exercising his powers under the above provisions, the Secretary of State may take into account any relevant representations made by the consultation parties¹⁸.

The operator has a right of appeal to the High Court against the Secretary of State's decision¹⁹.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 As to the meaning of 'permit' see PARA 595 note 7.

3 In accordance with the Offshore Chemicals Regulations 2002, SI 2002/1355: see PARAS 595-597, PARA 599 et seq.

4 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 12(1).

5 As to the meaning of 'pollution' see PARA 595 note 35.

6 As to the meaning of 'use' see PARA 595 note 2.

- 7 As to the meaning of 'discharge' see PARA 595 note 3.
- 8 As to the meaning of 'offshore chemical' see PARA 595 note 4.
- 9 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 12(2).
- 10 In notice in writing; see the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2. As to the service of notices see PARA 595 note 1.
- 11 As to the meaning of 'operator' see PARA 595 note 38.
- 12 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 12(3).
- 13 As to the use of electronic communications see PARA 595 note 1.
- 14 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 12(4).
- 15 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 12(5).
- 16 In under the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 12(3): see the text and notes 10-12.
- 17 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 12(6).
- 18 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 12(7). As to the meaning of 'consultation parties' see PARA 595 note 28.
- 19 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 17; and PARA 603.

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599. Revocation and surrender of permits.

The Secretary of State¹ may by notice² revoke a permit³ granted pursuant to the relevant regulations⁴ where he is of the opinion that an application for the grant, renewal or variation of the permit in question contained any information or statement which was false or misleading in a material particular or where the operator in question has been guilty of a breach of any condition attached to the permit⁵. The operator⁶ has the right of appeal to the High Court⁷.

An operator to whom a permit has been granted may surrender the permit by notice to the Secretary of State⁸.

A fee may be charged for the surrender of a permit⁹.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 In notice in writing: see the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 2. As to the service of notices see PARA 595 note 1.

3 As to the meaning of 'permit' see PARA 595 note 7.

4 In pursuant to the Offshore Chemicals Regulations 2002, SI 2002/1355: see PARAS 595-598, PARA 600 et seq.

5 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 13(1).

6 As to the meaning of 'operator' see PARA 595 note 38.

7 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 17; and PARA 603.

8 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 13(2).

9 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 8(1), (2)(c). As to the power to make a charging scheme for fees see PARA 595 note 38.

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600. Register to be kept by, and information to be given to, the Secretary of State.

The Secretary of State¹ must keep a register at a place in the United Kingdom² in which he must cause to be entered:

- 1351 (1) the terms and conditions of any permits³ granted under the relevant regulations⁴; and
- 1352 (2) the results of any monitoring information required to be sent to him under the conditions of any permit⁵.

The register must be open to public inspection on business days⁶ from 10 am until 4 pm⁷.

The operator⁸ must forthwith provide the Secretary of State with details of any incident or accident involving an offshore chemical⁹:

- 1353 (a) where there has been a breach of the permit or any of its conditions; or
- 1354 (b) where there has been, or may be, any significant effect¹⁰ on the environment¹¹.

Failure to do so is an offence¹².

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 As to the meaning of 'permit' see PARA 595 note 7.

4 Ie under to the Offshore Chemicals Regulations 2002, SI 2002/1355: see PARAS 595-599, PARA 601 et seq.

5 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 14(1).

6 As to the meaning of 'business day' see PARA 595 note 23.

7 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 14(2).

8 As to the meaning of 'operator' see PARA 595 note 38.

9 As to the meaning of 'offshore chemical' see PARA 595 note 4.

10 For these purposes, 'effect' includes any direct, indirect, secondary, cumulative, short, medium or long-term, permanent or temporary, or positive or negative effect: Offshore Chemicals Regulations 2002, SI 2002/1355, reg 15(2).

11 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 15(1).

12 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(1)(c); and PARA 604.

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601. Appointment of inspectors.

The Secretary of State¹ may, if he thinks fit, appoint one or more inspectors:

- 1355 (1) to investigate whether the requirements, restrictions or prohibitions imposed by or under the relevant regulations² have been, or are being complied with; or
- 1356 (2) to monitor the use³ or discharge⁴ of any offshore chemical⁵;

and the inspectors must report to the Secretary of State in such manner as he may direct⁶.

An inspector so appointed may, for any of the purposes mentioned in heads (1) and (2) above and on producing evidence of his appointment:

- 1357 (a) at any reasonable time (or, in a situation which in his opinion may give rise to a risk of significant pollution⁷ to the environment as a result of the use or discharge from an offshore installation⁸ of an offshore chemical, at any time) board any offshore installation;
- 1358 (b) on boarding an offshore installation take with him any other person authorised for those purposes by the Secretary of State and any equipment or materials that he thinks he may require;
- 1359 (c) make such examination or investigation as he considers necessary (including any examination or investigation of an offshore installation, for which purpose he may install or maintain monitoring or other apparatus on the offshore installation);
- 1360 (d) give a direction requiring that any part of the offshore installation be left undisturbed (whether generally or in particular respects) for so long as reasonably necessary for the purposes of any examination or investigation under head (c) above;
- 1361 (e) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under head (c) above;
- 1362 (f) take samples of any articles or substances found on the offshore installation or in the atmosphere or any land, sea bed (including the subsoil thereof) or water in the vicinity of the offshore installation;
- 1363 (g) in the case of any article or substance⁹ which he finds on the offshore installation, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless, in the circumstances of the case, that is necessary);
- 1364 (h) in the case of any such article or substance as is mentioned in head (g) above, take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely:

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- 105. (i) to examine it and do to it anything which he has power to do under that provision;

106. (ii) to ensure that it is not tampered with before his examination of it is completed; and
107. (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the relevant regulations¹⁰;
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1365 (i) require any person who he has reasonable cause to believe is able to give
any information relevant to any examination or investigation under head (c) above:
- 151
108. (i) to attend at a place and time specified by the inspector;
109. (ii) to answer (in the absence of any person other than persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask; and
110. (iii) to sign a declaration of truth of his answers¹¹;
- 152
1366 (j) require the production of, and inspect and take copies of or of any entry in:
- 153
111. (i) any records which by virtue of any provision of any permit¹² granted under the relevant regulations are required to be kept;
112. (ii) any records which he considers it necessary for him to see for the purposes of any examination or investigation under head (c) above¹³; and
- 154
1367 (k) require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by these provisions¹⁴.

A fee may be charged for the testing or analysis of substances, the validating of, or of the results of, any testing or analysis of substances and assessing how the environment might be affected by the release into it of any substances; but this only applies in cases where the testing, analysis, validating or assessing is in any way in anticipation of, or otherwise in connection with, the making of permit applications or is carried out in pursuance of conditions to which any permit is subject¹⁵.

It is an offence wilfully to obstruct an inspector or to fail, without reasonable excuse, to comply with a requirement imposed in pursuance of heads (a) to (k) above¹⁶.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 le by or under the Offshore Chemicals Regulations 2002, SI 2002/1355: see PARA 595 et seq, PARA 602 et seq.

3 As to the meaning of 'use' see PARA 595 note 2.

4 As to the meaning of 'discharge' see PARA 595 note 3.

5 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16(1). As to the meaning of 'offshore chemical' see PARA 595 note 4.

6 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16(2) (amended by SI 2005/2055).

7 As to the meaning of 'pollution' see PARA 595 note 35.

8 As to the meaning of 'offshore installation' see PARA 595 note 11.

9 As to the meaning of 'substance' see PARA 595 note 4.

10 As to offences under the Offshore Chemicals Regulations 2002, SI 2002/1355, see reg 18; and PARA 604.

11 An answer given by a person in compliance with a requirement imposed under the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16(3)(i) (see head (i) in the text) is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings or, in Scotland, against that person in criminal proceedings: reg 16(5). In criminal proceedings in which such a person is charged with an offence to which reg 16(6) applies, no evidence relating to that person's answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person: reg 16(6). Regulation 16(6) applies to any offence other than one under: (1) reg 18(1)(e)(ii) (see PARA 604); (2) the Perjury Act 1911 s 5 (false statements made otherwise than on oath) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 717); (3) the corresponding provisions under the law of Scotland or Northern Ireland: see the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16(7).

12 As to the meaning of 'permit' see PARA 595 note 7.

13 Nothing in the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16 is to be taken to compel the production by any person of a document of which he would on ground of legal professional privilege be entitled to withhold production on an order for disclosure or discovery in a claim in the High Court or the High Court in Northern Ireland or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session: see reg 16(8).

14 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16(3).

15 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 8(1), (2)(e)-(g). As to the power to make a charging scheme for fees see PARA 595 note 38.

16 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(1)(f), (g); and PARA 604.

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602. Enforcement and prohibition notices.

If the Secretary of State¹ is of the opinion that any person has contravened or is contravening any condition of a permit² or is likely to contravene any such condition, the Secretary of State or an inspector appointed by him³ may serve on the operator⁴ a notice in writing (an 'enforcement notice') which:

- 1368 (1) states that the Secretary of State is of that opinion;
- 1369 (2) specifies the matters which constitute, constituted or, as the case may be, are likely to constitute the contravention;
- 1370 (3) specifies the steps that must be taken to remedy or, as the case maybe, prevent the contravention, including steps that must be taken to remedy any pollution⁵ caused by the contravention; and
- 1371 (4) specifies the period within which those steps must be taken⁶.

Where a person to whom an enforcement notice is addressed has failed to take the action required by it within such time as may be specified by it and such a notice has not been revoked⁷, the Secretary of State may undertake any action so required and the reasonable costs and expenses of his so doing are recoverable as a debt from that person⁸. A person to whom an enforcement notice is addressed must afford such assistance as the Secretary of State may reasonably require for the purpose of facilitating the exercise of any powers so conferred on him⁹.

The exercise by the Secretary of State of any power conferred by the above provisions is without prejudice to the exercise by him of any other power under any other provision¹⁰ of the relevant regulations¹¹.

If the Secretary of State is of the opinion that the operation of an offshore installation¹² involves an imminent risk of serious pollution as a consequence of any use¹³ or discharge¹⁴ of offshore chemicals¹⁵, the Secretary of State or an inspector appointed by him¹⁶ may serve a notice in writing (a 'prohibition notice') on the operator of the installation¹⁷. A prohibition notice may be served whether or not the risk relates to the contravention of a permit and may relate to any aspects of the operation of the offshore installation, whether or not regulated by the conditions of such a permit¹⁸. A prohibition notice:

- 1372 (a) must state that the Secretary of State is of the opinion mentioned above;
- 1373 (b) must specify the risk involved in the operation of the offshore installation;
- 1374 (c) must specify the steps that must be taken to remove it and the period within which they must be taken; and
- 1375 (d) may direct that any permit is, until the notice is withdrawn wholly or in part¹⁹, to cease to have effect; and, where the direction applies to part only of the operation of the offshore installation, it may impose conditions to be observed in carrying on that part of the operation which is authorised under the relevant permit²⁰.

It is the duty of the person to whom the prohibition notice is addressed to comply with its terms save to the extent that it is withdrawn wholly or in part²¹.

The service of a prohibition notice is without prejudice to the exercise by any person of any power under any other provision²² of the relevant regulations²³.

Failure to comply with the terms of an enforcement notice or prohibition notice is an offence²⁴.

- 1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.
- 2 As to the meaning of 'permit' see PARA 595 note 7.
- 3 Ie under the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16: see PARA 601.
- 4 As to the service of notices see PARA 595 note 1; and as to the meaning of 'operator' see PARA 595 note 38.
- 5 As to the meaning of 'pollution' PARA 595 note 35.
- 6 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16A(1), (2) (regs 16A, 16B added by SI 2005/2055).
- 7 The Secretary of State or an inspector appointed by him under the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16 may revoke an enforcement notice served under reg 16A(1): reg 16A(5) (as added: see note 6).
- 8 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16A(3) (as added: see note 6).
- 9 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16A(4) (as added: see note 6).
- 10 Ie any other provision of the Offshore Chemicals Regulations 2002, SI 2002/1355: see PARA 595 et seq, PARAS 603-604.
- 11 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16A(6) (as added: see note 6).
- 12 As to the meaning of 'offshore installation' see PARA 595 note 11.
- 13 As to the meaning of 'use' see PARA 595 note 2.
- 14 As to the meaning of 'discharge' see PARA 595 note 3.
- 15 As to the meaning of 'offshore chemical' see PARA 595 note 4.
- 16 See note 3.
- 17 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16B(1) (as added: see note 6).
- 18 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16B(2) (as added: see note 6).
- 19 The Secretary of State or an inspector appointed by him under the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16 may by notice withdraw a prohibition notice wholly or in part at any time and must withdraw a notice when the Secretary of State is satisfied that the steps required by the notice have been taken: reg 16B(4) (as added: see note 6). The notice must be in writing: see PARA 595 note 1.
- 20 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16B(3) (as added: see note 6).
- 21 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16B(5) (as added: see note 6).
- 22 See note 10.
- 23 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16B(6) (as added: see note 6).
- 24 See the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(1)(h); and PARA 604.

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603. Appeals to the High Court.

Any permit applicant¹ or any operator² aggrieved by a decision of the Secretary of State³ made under the relevant regulations⁴ may appeal to the court⁵. Such an appeal must be made within 28 days of written notification⁶ of the decision in question⁷.

Unless the court otherwise orders, any decision of the Secretary of State which is the subject of such an appeal is to remain in force pending a final disposal of that appeal⁸.

1 As to the meaning of 'permit applicant' see PARA 595 note 9.

2 As to the meaning of 'operator' see PARA 595 note 38.

3 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

4 Ie made under the Offshore Chemicals Regulations 2002, SI 2002/1355: see PARA 595 et seq.

5 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 17(1). Subject to reg 17(4), 'court' means (1) in respect of a decision relating to the use or discharge of an offshore chemical in the English area, the High Court; (2) in respect of a decision relating to the use or discharge of an offshore chemical in the Scottish area (excluding Scottish controlled waters), the Court of Session; and (3) in respect of a decision relating to the use or discharge of an offshore chemical in the Northern Irish area, the High Court in Northern Ireland: reg 17(2). For these purposes, 'English area', 'Scottish area' and 'Northern Irish area' have the same meanings as in the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1656 note 6): Offshore Chemicals Regulations 2002, SI 2002/1355, reg 17(3). Where an offshore chemical is used or discharged or is to be used or discharged in more than one of the areas referred to in reg 17(2), (3), any of the courts having jurisdiction in the area or areas where the offshore chemical is used or discharged or is to be used or discharged has jurisdiction in relation to the decision in question: reg 17(4). As to the meanings of 'use', 'discharge' and 'offshore chemical' see PARA 595 notes 2-4; and as to the meaning of 'Scottish controlled waters' see PARA 595 note 3.

6 As to service of notices see PARA 595 note 1.

7 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 17(6).

8 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 17(5).

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604. Offences.

A person is guilty of an offence if he:

- 1376 (1) contravenes the prohibition on the use or discharge of offshore chemicals without a permit¹;
 - 1377 (2) fails to supply any information required to be supplied by virtue of the specified statutory provisions²;
 - 1378 (3) fails to supply any information required to be supplied by virtue of the terms of any permit granted under the relevant regulations³;
 - 1379 (4) knowingly or recklessly⁴ makes a statement which he knows to be false or misleading in a material particular where such a statement:
- 155
- 113. (a) is made in connection with or for the purposes of any permit application⁵ or any application for the renewal or variation of a permit⁶; or
 - 114. (b) is made for the purposes of satisfying any requirement under the relevant regulations for the supply of information to the Secretary of State⁷ or an inspector appointed by him⁸;
- 156
- 1380 (5) wilfully obstructs an inspector appointed by the Secretary of State⁹;
 - 1381 (6) without reasonable excuse fails to comply with a requirement imposed by an inspector¹⁰ or prevents another person from complying with such a requirement; or
 - 1382 (7) fails to comply with the terms of an enforcement notice or a prohibition notice¹¹.

Where, however, a person is charged with an offence under head (1) above, it is a defence to prove that the contravention:

- 1383 (i) arose as a result of something which could not have been reasonably prevented by him; or
- 1384 (ii) was due to something done as a matter of urgency for the purposes of securing the safety of any person¹².

Proceedings for an offence under these provisions may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom¹³. A person guilty of such an offence is liable to a fine¹⁴.

Where an offence under these provisions by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly¹⁵; and where the affairs of a body corporate are managed by its members, the above provision applies

in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate¹⁶.

Where the commission by any person of an offence under these provisions is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person¹⁷.

1 Ie contravenes the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 3(1): see PARA 595. As to the meanings of 'use', 'discharge' and 'offshore chemical' see PARA 595 notes 2-4; and as to the meaning of 'permit' see PARA 595 note 7.

2 Ie by virtue of the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 3(3) (see PARA 595) or reg 15 (see PARA 600).

3 Ie granted under the Offshore Chemicals Regulations 2002, SI 2002/1355: see PARA 595 et seq.

4 As to the meaning of 'recklessly' in the context of the criminal law see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 11.

5 As to the meaning of 'permit application' see PARA 595 note 9.

6 Ie any application under the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 10 (see PARA 596) or reg 11 (see PARA 597).

7 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

8 Ie an inspector appointed pursuant to the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16: see PARA 601.

9 Ie an inspector appointed under the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16.

10 Ie in pursuance of the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 16.

11 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(1) (amended by SI 2005/2055). As to enforcement and prohibition notices see PARA 602.

12 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(2).

13 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(7). The Territorial Waters Jurisdiction Act 1878 s 3 (restriction on prosecutions) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1056) does not apply to any proceedings for an offence under the Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18: reg 18(8).

14 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(3). Such a person is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine: see reg 18(3). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

15 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(4).

16 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(5).

17 Offshore Chemicals Regulations 2002, SI 2002/1355, reg 18(6).

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(D) RESTRICTIONS ON OPERATION OF OFFSHORE COMBUSTION INSTALLATIONS

605. Requirement for permit to operate combustion installation; application for permit.

No person may operate a qualifying offshore combustion installation¹ after the prescribed date² otherwise than in accordance with the terms of, and conditions attached to, a permit granted³ in accordance with the relevant regulations⁴; but this did not apply to the operation of an existing qualifying offshore combustion installation⁵ before 30 October 2007 except where that installation was the subject of a change which in the opinion of the Secretary of State⁶ was a substantial change⁷.

An application for the grant of a permit⁸ must be in writing⁹ and must contain a description of:

- 1385 (1) the installation and its activities;
- 1386 (2) the materials, substances and energy used in or generated by the installation;
- 1387 (3) the sources of emissions from the installation;
- 1388 (4) the conditions of the site of the installation;
- 1389 (5) the nature and quantities of foreseeable emissions from the installation into each medium as well as identification of significant effects of the emissions on the environment;
- 1390 (6) the proposed technology and other techniques for preventing or, where this is not possible, reducing emissions from the installation;
- 1391 (7) where necessary, measures for the prevention and recovery of waste generated by the installation;
- 1392 (8) measures planned to deal with the specified matters¹⁰;
- 1393 (9) measures planned to monitor emissions into the environment; and
- 1394 (10) the main alternatives (if any) studied by the applicant, in outline¹¹.

An application for a permit must also include a non-technical summary of the details referred to in heads (1) to (10) above¹². Where any of the information referred to in those heads is contained in a relevant environmental statement¹³, an application for a permit need not specify that information provided that it is accompanied by a copy of the environmental statement¹⁴.

Where the Secretary of State receives an application for a permit he must publish a notice in the Gazettes¹⁵ and by any other means he considers appropriate (which may include an electronic communication)¹⁶. A notice so published must:

- 1395 (a) state that a copy of the application may be obtained on request¹⁷;
- 1396 (b) specify an address from which such a copy may be obtained;
- 1397 (c) specify a date not less than four weeks after the date of publication in the Gazettes or, if the notice is not published on the same day in each Gazette, the last

such date of publication, by which persons may make representations regarding the application;

1398 (d) specify an address to which such representations are to be sent;

1399 (e) state, where applicable, the fact that a decision is subject to a national or transboundary environmental impact assessment¹⁸; and

1400 (f) state the nature of possible decisions in response to the application¹⁹.

The Secretary of State must take such steps as he considers appropriate to ensure that additional information²⁰ is made available to the public forthwith so that comments may be made by persons affected by or with an interest in an application²¹. Where additional information is so made available to the public, the Secretary of State must take such steps as he considers appropriate, having regard to the particular circumstances of the case, to allow persons affected by or with an interest in an application to make representations in respect of the application before a permit is granted²².

Where the Secretary of State is aware that the operation of an offshore combustion installation is likely to have a significant effect on the environment of an EEA state²³, or where that state so requests, the Secretary of State must²⁴ forward the information made public²⁵ to the state in question as soon as possible and no later than the date it is made available to the public, except in a case where a request is made by the EEA state after that date²⁶. Where the Secretary of State has supplied a copy of an application for a permit pursuant to the above provision, he must indicate to the EEA state in question the date on which the decision in relation to the granting of the permit is likely to be made and an address to which any representations should be sent, and must take into account any such representations received from persons in those EEA states²⁷.

Nothing in the above provisions regarding publicity²⁸ requires the disclosure of any information which is by virtue of the law of any part of the United Kingdom²⁹ subject to an obligation of confidentiality and:

1401 (i) which relates to an individual; or

1402 (ii) the disclosure of which might adversely affect the interests in a business of any person carrying on that business³⁰;

but this does not prevent the disclosure of other information included with information subject to such an obligation and to which head (i) or head (ii) above applies where that other information can be separated from the information so protected from disclosure³¹.

1 'Qualifying offshore combustion installation' means any combustion installation (other than one which has been rendered inoperable by being wholly or partially dismantled) which (1) is permanently installed on a platform; and (2) on its own or together with any other combustion installation installed on the same site (excluding any installation that has been rendered inoperable by complete or partial dismantling) has a rated thermal input exceeding 50 megawatts: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2. 'Combustion installation' means any technical apparatus in which fuels are oxidised to use the heat thus generated and includes gas turbines and diesel and petrol-fired engines and any equipment on a platform connected to such apparatus which could have an effect on emissions from that apparatus or could otherwise give rise to pollution but does not include any apparatus the main use of which is the disposal of gas by flaring or incineration; and 'pollution' includes in particular the discharge or emission into the environment of those substances listed in reg 2, Sch 2: reg 2. The main polluting substances which are so listed are as follows (Sch 2), ie:

5 (a) substances affecting air:

1. (i) sulphur dioxide and other sulphur compounds;

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2. (ii) oxides of nitrogen and other nitrogen compounds;

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3. (iii) carbon monoxide;
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 4. (iv) volatile organic compounds (including methane);
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 5. (v) metals and their compounds;
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 6. (vi) dust;
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 7. (vii) asbestos (suspended particulates, fibres);
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 8. (viii) chlorine and its compounds;
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 9. (ix) fluorine and its compounds;
9
 10. (x) arsenic and its compounds;
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 11. (xi) cyanides; and
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 12. (xii) substances and preparations which are capable of passing through the air and which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction;
12
- 6 (b) substances affecting water:
13. (i) organohalogen compounds and substances which may form such compounds in the aquatic environment;
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 14. (ii) organophosphorus compounds;
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 15. (iii) organotin compounds;
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 16. (iv) substances and preparations which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction in or via the aquatic environment;
16
 17. (v) persistent hydrocarbons and persistent bioaccumulable organic toxic substances;
17
 18. (vi) cyanides;
18
 19. (vii) metals and their compounds;
19
 20. (viii) arsenic and its compounds;
20
 21. (ix) biocides;
21
 22. (x) materials in suspension;
22
 23. (xi) substances which contribute to eutrophication (in particular, nitrates and phosphates); and
23
 24. (xii) substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters including biological oxygen demand or chemical oxygen demand).
24

'Platform' means any fixed or floating structure situated in the relevant area which: (A) is used for the purposes of or in connection with the production of petroleum; and (B) in the case of a floating structure, is maintained on

a station during the course of production; but does not include any structure where the principal purpose of the use of the structure is the establishment of the existence of petroleum or the appraisal of its characteristics, quality or quantity or the characteristics or extent of any reservoir in which it occurs; 'petroleum' includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation; and 'relevant area' means the area (together with places above and below it) comprising (aa) those parts of the sea adjacent to England and Wales from the low-water mark to the landward baseline of the United Kingdom territorial sea; (bb) the United Kingdom territorial sea apart from those areas comprised in Scottish controlled waters; and (cc) those areas of sea in any area for the time being designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636): Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2. 'Scottish controlled waters' means any waters which are controlled waters within the meaning of the Control of Pollution Act 1974 s 30A(1) (s 30A applies to Scotland only and is outside the scope of this work): Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2. Generally as to the territorial sea of the United Kingdom see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

2 'Prescribed date' means the date after the day on which the period of five months commencing on 19 March 2001 (ie the day on which the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, came into force: see reg 1) expired, save that where an application for a permit was made under reg 5 before that date it means: (1) the date on which the permit was granted whether in pursuance of the application or, on an appeal under reg 17 (see PARA 613), of an order of the court; or (2) where a permit was refused and the applicant appealed under reg 17 the date on which the court upheld that refusal; or (3) the date after the day on which the period provided for under reg 17(6) expired, as the case may be: reg 2.

3 Ie granted in accordance with the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091: see the text and notes 4-31; and PARA 606 et seq.

4 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 3(1).

5 'Existing qualifying offshore combustion installation' means any qualifying offshore combustion installation which (1) was in operation on any platform before 30 October 1999; or (2) was in, or was put into, operation before 1 November 2000 in accordance with a consent granted by the Secretary of State pursuant to any licence granted or having effect as if granted under the provisions of the Petroleum Act 1998, the application for such consent having been made before 30 October 1999: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2.

6 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

7 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 3(2). 'Substantial change' means (1) a change the extent of which is greater than a rated thermal input of 50 megawatts; or (2) a change in operation which may have significant negative effects on people or the environment: reg 2 (definition substituted by SI 2007/938).

8 Ie a permit under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4: see PARA 606.

9 A written document may be sent, given or issued to the intended recipient by (1) delivering it to him; or (2) leaving it at his proper address; or (3) sending it by post to him at that address; and for these purposes 'written document' includes an application, a permit, information, data, evidence, a representation or a notice under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091: reg 19(1), (2) (reg 19 substituted by SI 2005/2055). 'Notice' means notice in writing or by such means of electronic communication as the Secretary of State may decide: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2. A written document may be sent, given or issued (a) to a body corporate by being sent, given or issued to its secretary or clerk; (b) to a firm (including a Scottish partnership) by being sent, given or issued to a partner in the firm or to a person having management or control of the partnership business; (c) to an unincorporated body by being sent, given or issued to a member of its governing body: reg 19(3) (as so substituted). For these purposes and the purposes of the Interpretation Act 1978 s 7 in its application to this provision, the proper address (except in a case falling within the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 19(7)) of (i) the Secretary of State is the address of the principal office of the holder of the office of Secretary of State who for the time being exercises the functions of the Secretary of State under the 2001 Regulations; (ii) a body corporate is the address of its registered or principal office; (iii) a firm (including a Scottish partnership) or unincorporated body is the address of its principal office; (iv) any other person is his last known address: reg 19(4) (as so substituted). Where, by virtue of reg 19(1)-(4), the proper address of the intended recipient of a written document is outside the United Kingdom, references in reg 19 to the proper address of (A) a body

corporate, firm or unincorporated body include its principal office (if any) in the United Kingdom; (B) any other person include his last known address in the United Kingdom (unless he is known no longer to have an address in the United Kingdom): reg 19(5) (as so substituted). If the person to whom a written document is to be sent, given or issued has furnished the person by whom the written document is to be sent, given or issued with an address pursuant to any provision of the 2001 Regulations, that address is also to be treated for these purposes as his proper address: reg 19(6) (as so substituted). Where a written document is to be sent, given or issued by means of an electronic communication, the proper address of any person includes the number or address which he has indicated is to be used by him for receipt of the communication: reg 19(7) (as so substituted). Regulation 19 (ie amended so as to revoke the definition of 'electronic communication' previously set out therein by SI 2007/938) is without prejudice to any other lawful method of giving or serving notice: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 19(8) (as so substituted). 'Electronic communication' means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) while in an electronic form: reg 2 (definition added by SI 2007/938).

10 Ie the matters referred to in the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(2): see PARA 606.

11 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 5(1) (amended by SI 2007/938).

12 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 5(2).

13 'Relevant environmental statement' means, in relation to a qualifying offshore combustion installation, an environmental statement which contains information regarding the effects on the environment of the operation of the installation in question; and 'environmental statement' means an environmental statement within the meaning of the Offshore Petroleum and Pipelines (Assessment of Environmental Effects) Regulations 1998, SI 1998/968, reg 2(1) (revoked) or the Offshore Petroleum and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 3(1) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1646 note 8): Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2.

14 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 5(3).

15 'Gazettes' means the London, Edinburgh and Belfast Gazettes: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2.

16 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(1) (substituted by SI 2007/938).

17 Subject to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(5) (see the text and notes 28-30), where the Secretary of State receives a request in relation to an application for a permit prior to the granting of that permit, he must forthwith supply to the person requesting it a copy of the application in question: reg 7(2).

18 Ie pursuant to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(3) or (4): see the text and notes 23-27.

19 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(1A) (reg 7(1A)-(1C), (3A), (7) added by SI 2007/938).

20 For these purposes, 'additional information' means any other information of material relevance to the Secretary of State's decision that becomes available to the Secretary of State after an application for a permit has been submitted to him: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(7) (as added: see note 19).

21 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(1B) (as added: see note 19).

22 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(1C) (as added: see note 19).

23 'EEA state' means a member state, Norway, Iceland or Liechtenstein: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2 (definition substituted by SI 2007/938).

24 le subject to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(3A), (5). Regulation 7(3) only applies where the Secretary of State has received an application for a permit within the meaning of EC Council Directive 96/61 (OJ L257, 10.10.96, p 26) art 4 or art 12(2): Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(3A) (as added: see note 19). Directive 96/61 is repealed and replaced by European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version): see PARAS 6, 18. References to the repealed Directive are to be construed as references to the new Directive: art 22.

25 le pursuant to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(1), (1B): see the text and notes 18-21.

26 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(3) (reg 7(3), (4) amended by SI 2007/938).

27 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(4) (as amended: see note 26).

28 le the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7: see the text and notes 15-27, 29-31.

29 As to the meaning of 'United Kingdom' see PARA 1 note 2.

30 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(5).

31 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(6).

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606. Grant of permit.

Where the Secretary of State¹ receives an application for a permit², he may grant that application provided that:

- 1403 (1) he has taken into account any relevant environmental statement³ and any representations regarding the application made by the public or made by any EEA state⁴ affected by the operation of the combustion installation⁵; and
- 1404 (2) he is satisfied that there has been substantial compliance with the prescribed requirements⁶ regarding publicity for the application⁷.

The Secretary of State must⁸ attach to every permit so granted by him conditions which in his opinion are framed in such a way as to ensure that:

- 1405 (a) all appropriate measures are taken to prevent pollution⁹, in particular through application of best available techniques¹⁰;
- 1406 (b) no significant pollution is caused;
- 1407 (c) where possible the production of non-gaseous waste is avoided by:

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- 115. (i) the use of clean technologies more sparing in their use of natural resources; or
- 116. (ii) the use of products designed to reduce the amount or harmfulness of waste,

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- 1408 and that where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of in such a way as to avoid or reduce any impact on the environment¹¹;

- 1409 (d) subject to the attainment of the objective set out in head (a) above, energy is used efficiently;

- 1410 (e) necessary measures are taken to prevent accidents affecting the environment or where they occur to limit their consequences in relation to the environment;

- 1411 (f) necessary measures are taken upon the final cessation of use of the combustion installation to avoid any pollution risk and to decommission and remove the installation;

- 1412 (g) taking into account the technical characteristics of the installation concerned, its geographical location, local environmental conditions and best available techniques and having regard to the potential for the transfer of the pollution in question from one medium¹² to another, there are controls on the emission of pollutants likely to be emitted from the combustion installation in significant quantities in the form of:

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- 117. (i) emission value limits¹³ for such pollutants;
- 118. (ii) where the Secretary of State considers this to be more appropriate, equivalent parameters or technical measures; or

119. (iii) a combination of emission value limits and equivalent parameters and technical measures,
- 160
- 1413 without in any case prescribing the use of any technique or specific technology¹⁴;
- 1414 (h) where necessary, there are appropriate requirements ensuring protection of the soil and ground water and measures concerning waste generated by the installation;
- 1415 (i) there are suitable release monitoring requirements relating to the release of pollutants, specifying measurement methodology and frequency, evaluation procedure and an obligation to supply the Secretary of State with data required for checking compliance with the permit;
- 1416 (j) there are appropriate provisions to minimise long-distance or transboundary pollution; and
- 1417 (k) where in the opinion of the Secretary of State there is a risk to the environment from these, there are measures relating to conditions other than normal operating conditions including start-up, leaks, malfunctions, momentary stoppages and definitive cessation of operations¹⁵.

Heads (a) to (k) above do not, however, apply to the extent that the Secretary of State is satisfied that the matters referred to therein are adequately dealt with by or under the provisions of any other enactment¹⁶.

In addition to any conditions required to be attached to any permit by virtue of heads (a) to (k) above, the Secretary of State may attach to a permit such other conditions as he thinks fit¹⁷.

Where the Secretary of State grants a permit he must send it to the applicant¹⁸. A fee may be charged for the grant of a permit or in respect of its subsistence¹⁹. The Secretary of State must publish in the Gazette²⁰ notice of the granting of any permit²¹.

Where the Secretary of State refuses an application for the grant of a permit he must give notice²² of such refusal to the applicant²³. There is a right of appeal to the High Court against the refusal of a permit²⁴.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 Ie in accordance with the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 5: see PARA 605.

3 As to the meaning of 'relevant environmental statement' see PARA 605 note 13.

4 As to the meaning of 'EEA state' see PARA 605 note 23.

5 As to the meaning of 'combustion installation' see PARA 605 note 1.

6 Ie with the requirements of the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7: see PARA 605.

7 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(1). This is subject to reg 4(3) (see the text and note 16): reg 4(1).

8 Ie subject to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(3) (see the text and note 16) and reg 4(4) (see note 11): reg 4(2). This was also expressed to be subject to reg 4(4A) (see note 14): reg 4(2) (amended by SI 2003/3311 (revoked with savings)). As to the status of that provision, however, see note 14.

9 As to the meaning of 'pollution' see PARA 605 note 1.

10 'Best available techniques' means, having regard to the matters set out in the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2, Sch 1, the most effective and advanced stage in the development of combustion installations and their methods of operation which can be practically applied on platforms and which allows the setting of emission value limits to reduce or, where possible, eliminate emissions into, and effects on, the environment as a whole from the operation of such installations; and for the purposes of this definition (1) 'available techniques' means those techniques which can be implemented on platforms under economically and technically viable conditions, balancing the costs of their implementation against the benefits to the environment; (2) 'best' means, in relation to techniques, the most effective in achieving a high general level of protection of the environment as a whole; and (3) 'techniques' includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned: reg 2. As to the meaning of 'platform' see PARA 605 note 1; and as to the meaning of 'emission value limit' see note 13.

The matters to be taken into account when determining best available techniques, bearing in mind the likely costs and benefits of a measure and the principles of precaution and prevention, are as follows (Sch 1), namely:

- 7 (a) the use of low waste technology;
- 8 (b) the use of less hazardous substances;
- 9 (c) the furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate;
- 10 (d) comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;
- 11 (e) technological advances and changes in scientific knowledge and understanding;
- 12 (f) the nature, effects and quantity of emissions concerned;
- 13 (g) the commissioning dates for new or existing installations;
- 14 (h) the length of time needed to introduce the best available technique;
- 15 (i) the consumption and nature of raw materials (including water) used in the process and their energy efficiency;
- 16 (j) the need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it;
- 17 (k) the need to prevent accidents and to minimise the consequences for the environment; and
- 18 (l) the information published by the European Commission pursuant to EC Council Directive 96/61 (OJ L257, 10.10.96, p 26) art 16(2) (see below) concerning integrated pollution prevention and control or by international organisations.

In regard to head (12) above Directive 96/61 is repealed and replaced by European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version): see PARAS 6, 18. References to the repealed Directive are to be construed as references to the new Directive: art 22.

11 Where an application for a permit includes details of any plan designed to reduce pollution from the combustion installation in question, the Secretary of State may include derogations from any condition imposed in compliance with the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(2)(c) (see head (c) in the text) provided that such derogations are limited to the period of six months following the grant of the permit: reg 4(4).

12 'Medium' means the air, water or, as the case may be, land or the sea bed (including its subsoil): Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2.

13 'Emission value limit' in relation to a polluting substance includes any limit expressed in terms of the emission of a mass of that substance over any given period: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2.

14 Subject to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(4B), where emissions of a pollutant from an installation or a part of an installation were the

subject of conditions imposed pursuant to the Greenhouse Gas Emissions Trading Scheme Regulations 2003, SI 2003/3311, reg 10(2), (3) (revoked), the Secretary of State might not under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(2)(g) (see head (g) in the text) attach to a permit an emission value limit, equivalent parameter or technical measure in respect of those emissions unless the regulator considered that the value limit, parameter or measure concerned was necessary to ensure that no significant local pollution was caused: see reg 4(4A) (reg 4(4A), (4B) added by SI 2003/3311). This did not apply where the relevant installation or part of an installation was an excluded installation for the purposes of the Greenhouse Gas Emissions Trading Scheme Regulations 2003, SI 2003/3311 (now revoked with savings): Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(4B) (as so added). See now the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925; and PARA 616; and see also PARA 260.

15 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(2).

16 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(3).

17 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(5).

18 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(6).

19 See the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 6(1), (2)(a), (d) (reg 6 substituted by SI 2005/2055). The Secretary of State may, in accordance with a charging scheme made by him for this purpose, charge operators fees in respect of any of the matters to which the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 6(1) applies: reg 6(1) (as so substituted). As to those matters see reg 6(2); and PARAS 607, 609. A charging scheme so made must be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure as may be incurred by or on behalf of the Secretary of State in connection with any of the matters to which reg 6(1) applies: reg 6(3) (as so substituted). 'Operator' means any person who operates a qualifying offshore combustion installation: reg 2. As to the meaning of 'qualifying offshore combustion installation' see PARA 605 note 1.

20 As to the meaning of 'Gazettes' see PARA 605 note 15.

21 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(8).

22 As to the meaning of 'notice', and as to the service of notices, see PARA 605 note 9.

23 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 4(7).

24 See the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 17; and PARA 613.

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607. Variation of conditions of permit on application of operator.

An operator¹ must apply in writing for a variation of the terms and conditions relating to a qualifying offshore combustion installation² where he proposes to make a change in the operation³ of that installation and the operation of the installation after the making of that change would no longer be in accordance with the terms and conditions relating to that permit⁴. Where the Secretary of State⁵ determines that the change planned by the operator would not be a substantial change⁶ he may grant the application and vary the terms and conditions of the permit accordingly⁷; and where he grants such an application he may make the granting of the application subject to such further conditions as he thinks fit⁸. Where an application so made is granted, the Secretary of State must issue to the applicant a revised permit⁹. A fee may be charged for the variation of a permit or of the conditions to which it is subject¹⁰.

Where the Secretary of State determines that the change would be a substantial change he must refuse the application and serve a notice¹¹ in writing on the applicant which states that the proposed change would, in the opinion of the Secretary of State, be a substantial change and that the application is refused¹². There is a right of appeal to the High Court against such a refusal¹³.

1 As to the meaning of 'operator' see PARA 606 note 19.

2 As to the meaning of 'qualifying offshore combustion installation' see PARA 605 note 1.

3 'Change in operation' means a change in the nature or functioning, or an extension, of a combustion installation which may have consequences for the environment: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2.

4 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 8(1).

5 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

6 As to the meaning of 'substantial change' see PARA 605 note 7.

7 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 8(2).

8 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 8(3).

9 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 8(5).

10 See the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 6(1), (3)(b) (reg 6 substituted by SI 2005/2055). As to the power to make a charging scheme for fees see PARA 606 note 19.

11 As to the service of notices see PARA 605 note 9.

12 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 8(4).

13 See the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 17; and PARA 613.

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608. Reconsideration and updating of permit conditions.

The Secretary of State¹ must at such intervals as he thinks fit review the conditions attached to every permit granted² under the relevant regulations³. He must review the conditions of a permit where in his opinion:

- 1418 (1) the pollution⁴ caused by the installation is of such significance that all or any emission value limits⁵, equivalent parameters or technical measures of the permit need to be revised;
- 1419 (2) substantial changes in best available techniques⁶ make it possible to reduce emissions significantly without incurring excessive costs; or
- 1420 (3) the operational safety of the process or activity requires other techniques to be used⁷.

Where the Secretary of State considers that the conditions of a permit should be revised following a review pursuant to head (2) or head (3) above:

- 1421 (a) he must, not less than 14 days prior to the relevant day⁸, give notice⁹ to the operator¹⁰ of the installation concerned of his intention to issue the operator with a revised permit and of its terms; and
- 1422 (b) the operator is entitled to make representations, either in writing or by such means of electronic communication as the Secretary of State may determine, as to whether such a revised permit should be issued and as to its terms¹¹.

If no representations made pursuant to head (b) above are received prior to the relevant day, the revised permit is to be issued and to come into effect on that day¹². If, however, representations so made are received prior to the relevant day, the Secretary of State must consider them in determining whether the revised permit as originally notified under head (a) above should be amended, withdrawn or issued and may determine that the revised permit should come into effect on a later day than the relevant day¹³.

Where the Secretary of State considers that the conditions of a permit should be revised following a review pursuant to head (1) above, he must:

- 1423 (i) not less than four weeks prior to the relevant day give notice to the operator of the installation concerned of his intention to issue the operator with a revised permit and of its terms;
- 1424 (ii) publish a notice in the Gazettes¹⁴ and by any other means he considers appropriate (which may include an electronic communication)¹⁵; and
- 1425 (iii) take such steps as he considers appropriate to ensure that any other material information that becomes available only after the prescribed information¹⁶ has been made available to the public¹⁷ is forthwith made available to the public¹⁸.

Where information is made publicly available pursuant to head (ii) or head (iii) above, the Secretary of State must take such steps as he considers appropriate having regard to the particular circumstances of the case to allow persons affected by or with an interest in the proposed revision to make representations¹⁹. If representations so made are received prior to the relevant day, the Secretary of State must consider them in determining whether the revised permit as originally notified under head (i) above should be amended, withdrawn or issued and may determine that the revised permit is to come into effect on a later day than the relevant day²⁰.

Nothing in the above provisions requires the disclosure of any information which is by virtue of the law of any part of the United Kingdom²¹ subject to an obligation of confidentiality and:

1426 (A) which relates to an individual; or

1427 (B) the disclosure of which might adversely affect the interests in a business of any person carrying on that business²²;

but this does not prevent the disclosure of other information included with information subject to such an obligation and to which head (A) or head (B) above applies where that other information can be separated from the information so subject²³.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 I.e. every permit granted under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091: see PARAS 605-607, PARA 609 et seq.

3 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(1).

4 As to the meaning of 'pollution' see PARA 605 note 1.

5 As to the meaning of 'emission value limit' see PARA 605 note 13.

6 As to the meaning of 'best available techniques' see PARA 606 note 10.

7 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(2) (amended by SI 2007/938).

8 For these purposes, the 'relevant day' is the day on which a notice given pursuant to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(3)(a) or (4)(a) (see heads (a), (i) in the text) states that a revised permit is to have effect: reg 9(7) (reg 9(3A), (3B), (4A)-(4C), (7) added by SI 2007/938).

9 As to the meaning of 'notice' and as to the service of notices see PARA 605 note 9.

10 As to the meaning of 'operator' see PARA 606 note 19.

11 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(3) (reg 9(3), (4), (5), (6) substituted by SI 2007/938).

12 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(3A) (as added: see note 8).

13 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(3B) (as added: see note 8).

14 As to the meaning of 'Gazettes' see PARA 605 note 15.

15 A notice published pursuant to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(4)(b) (see head (ii) in the text) must (1) state that the Secretary of State is considering revising the conditions of a permit pursuant to reg 9(2)(a) (see head (1) in the text); (2) state that a copy of the proposal for revising the permit may be obtained on request; (3) specify an address from which

such a copy may be obtained; (4) specify a date not less than four weeks after the date of publication in the Gazette or, if the notice is not published on the same day in each Gazette, the last such date of publication, by which persons may make representations regarding the proposal; (5) specify an address to which such representations are to be sent; and (6) state the nature of possible decisions in relation to the revision of the permit: reg 9(4A) (as added: see note 8). As to the meaning of 'electronic communication' see PARA 605 note 9.

16 le the information referred to in the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(4A): see note 15.

17 le in accordance with the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(4A): see note 15.

18 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(4) (as substituted: see note 11).

19 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(4B) (as added: see note 8).

20 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(4C) (as added: see note 8).

21 As to the meaning of 'United Kingdom' see PARA 1 note 2.

22 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(5) (as substituted: see note 11).

23 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 9(6) (as substituted: see note 11).

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609. Revocation, surrender and assignment of permit.

The Secretary of State¹ may by notice² revoke a permit granted pursuant to the relevant regulations³ where he is of the opinion that the application for the permit in question contained any information or statement which was false or misleading in a material particular or where the operator⁴ in question has been guilty of a breach of any condition attached to the permit⁵.

An operator may by notice surrender a permit granted to him⁶.

With the consent of the Secretary of State, a permit may be assigned to another person; but where the Secretary of State consents to such assignment it does not take effect until he has issued to the person to whom the permit is to be assigned a permit in that person's name⁷.

A fee may be charged for the revocation, surrender or assignment of a permit⁸.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 As to the meaning of 'notice' and as to the service of notices see PARA 605 note 9.

3 I.e. granted pursuant to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091: see PARAS 605-608, PARA 610 et seq.

4 As to the meaning of 'operator' see PARA 606 note 19.

5 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 10(1).

6 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 10(2).

7 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 10(3).

8 See the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 6(1), (2)(c) (reg 6 substituted by SI 2005/2055). As to the power to make a charging scheme for fees see PARA 606 note 19.

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610. Register to be kept by, and information to be provided to, the Secretary of State.

The Secretary of State¹ must keep a register at a place in the United Kingdom² in which he must cause to be entered:

- 1428 (1) the provisions of any permit granted under the relevant regulations³ and of any conditions and any subsequent amendments;
- 1429 (2) any results of the monitoring of the releases required to be sent to him under the conditions of any permit; and
- 1430 (3) details of public participation in the decision-making process, including a summary of concerns and opinions expressed by persons interested in or affected by the application, together with a summary of the reasons for the decision⁴.

The register must be open to public inspection on business days⁵ between the hours of 10 am and 4 pm, and the Secretary of State may ensure that the entry in the register of the information referred to in head (1) above is made by any means he considers appropriate, including an electronic communication⁶.

In a case where information has been forwarded to an EEA state⁷, the Secretary of State must take the necessary steps to notify each such EEA state of all information to be entered in the register pursuant to heads (1) to (3) above⁸.

The operator⁹ must forthwith provide to the Secretary of State details of any incident or accident involving a qualifying offshore combustion installation¹⁰ where there has been a significant negative effect on the environment¹¹. He must also forthwith provide to the Secretary of State details of any planned changes in the nature or functioning or any planned extension of a qualifying offshore combustion installation which may have consequences for the environment¹².

For the purposes of the discharge by the Secretary of State of any obligation of the United Kingdom under the European Directive concerning integrated pollution prevention and control¹³, the Secretary of State may, by notice served¹⁴ on any person, require that person to furnish such information as may be specified in the notice, in such form and within such period following service of the notice or at such time as is so specified¹⁵. The information which a person may be required to furnish by a notice so served includes information on emissions which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to compile for the purpose of complying with the notice¹⁶.

It is an offence to fail to supply any information required to be supplied by virtue of the above provisions or by virtue of a notice served under them¹⁷.

¹ As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 le granted under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091: see PARAS 605-609, PARA 611 et seq.

4 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 11(1) (reg 11(1) substituted, reg 11(2) amended and reg 11(3) added, by SI 2007/938).

5 'Business day' means any day except a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2.

6 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 11(2) (as amended: see note 4). As to the meaning of 'electronic communication' see PARA 605 note 9.

7 le pursuant to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7(3): see PARA 605. As to the meaning of 'EEA state' see PARA 605 note 23.

8 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 11(3) (as added: see note 4).

9 As to the meaning of 'operator' see PARA 606 note 19.

10 As to the meaning of 'qualifying offshore combustion installation' see PARA 605 note 1.

11 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 12(1).

12 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 12(2).

13 le under EC Council Directive 96/61 (OJ L257, 10.10.96, p 26). Directive 96/61 is repealed and replaced by European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version): see PARAS 6, 18. References to the repealed Directive are to be construed as references to the new Directive: art 22.

14 As to the meaning of 'notice' and as to service of notices see PARA 605 note 9.

15 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 12(3).

16 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 12(4).

17 See the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18(1)(d); and PARA 614.

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611. Appointment of inspectors.

The Secretary of State¹ may, if he thinks fit, appoint in writing any person as an inspector to report to him:

- 1431 (1) whether the requirements, restrictions or prohibitions imposed by or under the relevant regulations² have been complied with; and
- 1432 (2) to monitor the condition or operation of, emissions from or discharges from, any qualifying offshore combustion installation³.

An inspector so appointed may, for any of the purposes mentioned in heads (1) and (2) above:

- 1433 (a) at any reasonable time (or, in a situation which in his opinion may give rise to a risk of significant pollution⁴ to the environment as a result of the operation of any qualifying offshore combustion installation, at any time) board any platform⁵;
- 1434 (b) on boarding a platform take with him any other person authorised by the Secretary of State for the purposes mentioned in heads (1) and (2) above and any equipment or materials that he requires;
- 1435 (c) make such examination and investigation as he considers necessary (for which purpose he may install or maintain monitoring or other apparatus on a platform);
- 1436 (d) give a direction requiring that any part of the platform be left undisturbed (whether generally or in particular respects) for so long as reasonably necessary for the purposes of any examination or investigation under head (c) above;
- 1437 (e) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under head (c) above;
- 1438 (f) take samples of any articles or substances found on the platform and of the atmosphere or any land, sea bed (including the subsoil thereof) or water in the vicinity of the platform;
- 1439 (g) in the case of any article or substance which he finds on the platform and which appears to him to have caused or to be likely to cause significant pollution, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless, in the circumstances of the case, that is necessary);
- 1440 (h) in the case of any such article or substance as is mentioned in head (g) above, take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely:

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- 120. (i) to examine it and do to it anything which he has power to do under that provision;
- 121. (ii) to ensure that it is not tampered with before his examination of it is completed;
- 122. (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the relevant regulations⁶;

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- 1441 (i) require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under head (c) above:
- 163
- 123. (i) to attend at a place and time specified by the inspector;
 - 124. (ii) to answer (in the absence of any person other than persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask; and
 - 125. (iii) to sign a declaration of the truth of his answers⁷;
- 164
- 1442 (j) require the production of, and inspect and take copies of or of any entry in:
- 165
- 126. (i) any records which by virtue of any provision of any permit granted under the relevant regulations⁸ are required to be kept;
 - 127. (ii) any records which he considers it necessary to see for the purposes of any examination or investigation under head (c) above⁹; and
- 166
- 1443 (k) require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by these provisions¹⁰.

It is an offence wilfully to obstruct an inspector appointed under these provisions or to fail, without reasonable excuse, to comply with an obligation imposed on a person in pursuance of heads (a) to (k) above¹¹.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 Ie by or under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091: see PARAS 605-610; the text and notes 3-12; and PARA 612 et seq.

3 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13(1) (reg 13(1), (2) amended by SI 2005/2055). As to the meaning of 'qualifying offshore combustion installation' see PARA 605 note 1.

4 As to the meaning of 'pollution' see PARA 605 note 1.

5 As to the meaning of 'platform' see PARA 605 note 1.

6 As to offences under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, see reg 18; and PARA 614.

7 An answer given by a person in compliance with a requirement imposed under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13(2)(i) (see head (i) in the text) is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings or, in Scotland, against that person in criminal proceedings: reg 13(3) (reg 13(3) substituted, and reg 13(3A), (3B) added, by SI 2005/2055). In criminal proceedings in which such person as is mentioned in the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13(3) is charged with an offence to which reg 13(3A) applies, no evidence relating to that person's answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person: reg 13(3A) (as so added). Regulation 13(3A) applies to any offence other than one under: (1) reg 18(1)(f)(ii) (see PARA 614); (2) the Perjury Act 1911 s 5 (false statements made otherwise than on oath) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 717); (3) the corresponding provisions under the law of Scotland or Northern Ireland: see the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13(3B) (as so added).

8 Ie any permit granted under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091. As to the granting of permits see PARA 606.

9 Nothing in the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13 is to be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure or discovery in a claim in the High Court or the High Court in Northern Ireland or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session: reg 13(4).

10 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13(2) (as amended: see note 3).

11 See the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18(1)(g), (h); and PARA 614.

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612. Enforcement and prohibition notices.

If the Secretary of State¹ is of the opinion that any person has contravened or is contravening any condition of his permit, or is likely to contravene any such condition, the Secretary of State or an inspector appointed by him² may serve on the operator³ a notice⁴ in writing (an 'enforcement notice') which:

- 1444 (1) states that the Secretary of State is of such an opinion;
- 1445 (2) specifies the matters which constitute, constituted or, as the case may be, are likely to constitute the contravention;
- 1446 (3) specifies the steps that must be taken to remedy or, as the case may be, prevent the contravention, including steps that must be taken to remedy any pollution⁵ caused by a contravention; and
- 1447 (4) specifies the period within which those steps must be taken⁶.

Where a person to whom an enforcement notice is addressed has failed to take the action required by it within such time as may be specified by it and such a notice has not been revoked⁷, the Secretary of State may undertake any action so required and the reasonable costs and expenses of his so doing are recoverable as a debt from that person⁸. A person to whom an enforcement notice is addressed must afford such assistance as the Secretary of State may reasonably require for the purpose of facilitating the exercise of any powers so conferred on him⁹.

The service of an enforcement notice is without prejudice to the exercise of any other power under any other provision¹⁰ of the relevant regulations¹¹.

If the Secretary of State is of the opinion that the operation of a qualifying offshore combustion installation¹² involves an imminent risk of serious pollution, the Secretary of State or an inspector appointed by him¹³ may serve a notice in writing (a 'prohibition notice') on the operator of the installation¹⁴. A prohibition notice may be served whether or not the manner of operating the combustion installation in question contravenes a condition of the permit and may relate to any aspects of the operation of the combustion installation, whether regulated by the conditions of the permit or not¹⁵. A prohibition notice must:

- 1448 (a) state that the Secretary of State is of the opinion mentioned above;
- 1449 (b) specify the risk involved in the operation of the installation;
- 1450 (c) specify the steps that must be taken to remove it and the period within which they must be taken; and
- 1451 (d) direct that the permit is, until the notice is withdrawn¹⁶, wholly or to the extent specified in the notice, to cease to have effect to permit the operation of the installation,

and where the direction applies to part only of the operation of the installation it may impose conditions to be observed in carrying on the part which is authorised to be carried on¹⁷. The

service of a prohibition notice is without prejudice to the exercise by any person of any power under any other provision¹⁸ of the relevant regulations¹⁹.

It is the duty of the person to whom the prohibition notice is addressed to comply with its terms save to the extent that it is withdrawn wholly or in part²⁰. Where a person to whom a prohibition notice is addressed has failed to take the action required by it within such time as may be specified in it or, in default of any time being specified, within a reasonable time of service of that notice, and such a notice has not been withdrawn, the Secretary of State may himself undertake any action required and the cost of so doing is recoverable from the person on whom the notice was served²¹. The person to whom such a notice has been addressed must afford such assistance as the Secretary of State may reasonably require for the purpose of facilitating the exercise of any powers so conferred on the Secretary of State²².

The exercise by the Secretary of State of any power conferred on him to take action²³ is without prejudice to any consequences that may arise in respect of any non-compliance with an enforcement notice or a prohibition notice²⁴. It is an offence to fail to comply with the terms of an enforcement notice or a prohibition notice²⁵.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 He appointed under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13: see PARA 611.

3 As to the meaning of 'operator' see PARA 606 note 19.

4 As to the service of notices see PARA 605 note 9.

5 As to the meaning of 'pollution' see PARA 605 note 1.

6 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 14(1), (2) (reg 14(1) amended by SI 2005/2055).

7 The Secretary of State or an inspector appointed by him under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13 may revoke an enforcement notice served under reg 14(1): reg 14(4A) (added by SI 2005/2055).

8 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 14(3) (reg 14(3), (4) substituted by SI 2005/2055). See also the somewhat differently worded Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 16(1), which is set out in the text and note 21 as it applies to prohibition notices but which is also expressed to apply to enforcement notices.

9 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 14(4) (as substituted: see note 8). See also reg 16(2), which is set out in the text and note 22 as it applies to prohibition notices but which is also expressed to apply to enforcement notices.

10 He any other provision of the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091: see PARA 605 et seq, PARAS 613-615.

11 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 14(5).

12 As to the meaning of 'qualifying offshore combustion installation' see PARA 605 note 1.

13 See note 2.

14 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 15(1) (reg 15(1), (4) substituted by SI 2005/2055).

15 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 15(2).

16 The Secretary of State or an inspector appointed by him under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13 may by notice withdraw a prohibition notice wholly or in part at any time and must withdraw a notice when the Secretary of State is satisfied that the steps required by the notice have been taken: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 15(4) (as substituted: see note 14).

17 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 15(3).

18 See note 10.

19 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 15(6).

20 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 15(5).

21 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 16(1). As to the application of reg 16(1) to enforcement notices see note 8.

22 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 16(2). As to the application of reg 16(1) to enforcement notices see note 9.

23 Is any power conferred on him by the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 16(1): see the text and note 21.

24 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 16(3).

25 See the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18(1)(c); and PARA 614.

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613. Appeal to the High Court.

Any applicant for a permit or any operator¹ aggrieved by a decision of the Secretary of State² made under the relevant regulations³ may appeal to the court⁴. Such an appeal must be made within 28 days of written notification⁵ of the decision in question⁶.

Unless the court otherwise orders, any decision of the Secretary of State which is the subject of such an appeal remains in force pending the final disposal of that appeal⁷.

1 As to the meaning of 'operator' see PARA 606 note 19.

2 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

3 le made under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091: see PARA 605 et seq, PARAS 614-615.

4 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 17(1). Subject to reg 17(4), 'court' means: (1) in respect of a decision relating to the operation of an offshore combustion installation in the English area, the High Court; (2) in respect of a decision relating to the operation of an offshore combustion installation in the Scottish area (excluding Scottish controlled waters), the Court of Session; or (3) in respect of a decision relating to the operation of an offshore combustion installation in the Northern Irish area, the High Court in Northern Ireland: reg 17(2). For these purposes, 'English area', 'Scottish area' and 'Northern Irish Area' have the same meanings as in the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1656 note 6): Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 17(3). As to the meaning of 'Scottish controlled waters' see PARA 605 note 1. Where the combustion installation is situated in more than one of the areas referred to in regs 17(2), (3), any of the courts having jurisdiction in those areas has jurisdiction in relation to the decision in question: reg 17(4). As to the meaning of 'combustion installation' see PARA 605 note 1.

5 As to the service of notices see PARA 605 note 9.

6 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 17(6).

7 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 17(5).

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614. Offences.

A person is guilty of an offence if he:

- 1452 (1) operates a combustion installation¹ without a permit;
- 1453 (2) operates a combustion installation in breach of the terms of any condition attached to any permit;
- 1454 (3) fails to comply with the terms of an enforcement notice or a prohibition notice²;
- 1455 (4) fails to supply any information required to be supplied to the Secretary of State³;
- 1456 (5) fails to supply any information required to be supplied by virtue of the terms of any permit granted under the relevant regulations⁴;
- 1457 (6) knowingly or recklessly makes a statement which he knows to be false or misleading in a material particular where such a statement:
- 167 128. (a) is made in connection with, or for the purposes of, any application for a permit or the variation of a permit; or
- 129. (b) is made for the purposes of satisfying any requirement under the relevant regulations for the supply of information to the Secretary of State or an inspector appointed by him⁵;
- 168
- 1458 (7) wilfully obstructs an inspector appointed by the Secretary of State⁶; or
- 1459 (8) without reasonable excuse fails to comply with an obligation imposed by an inspector⁷ or prevents another person from complying with such a requirement⁸.

It is, however, a defence to a charge under head (2) or head (3) above if the person charged with an offence shows that the contravention:

- 1460 (i) arose as a result of something which could not have been reasonably prevented by him; or
- 1461 (ii) was due to something done as a matter of urgency for the purposes of securing the safety of any person⁹.

Proceedings for an offence under these provisions may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom¹⁰. A person guilty of such an offence is liable to a fine¹¹.

Where an offence under these provisions by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly¹²; and where the affairs of a body corporate are managed by its members, the above provision applies

in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate¹³.

Where the commission by any person of an offence under these provisions is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person¹⁴.

1 As to the meaning of 'combustion installation' see PARA 605 note 1.

2 As to enforcement and prohibition notices see PARA 612.

3 Ie by virtue of the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 12, or of a notice served thereunder: see PARA 610. As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

4 Ie any permit granted under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091: see PARA 605 et seq.

5 Ie appointed pursuant to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13(1): see PARA 611.

6 Ie an inspector appointed under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13(1).

7 Ie imposed in pursuance of the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 13(2): see PARA 611.

8 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18(1). As to the meaning of 'recklessly' in the context of the criminal law see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 11.

9 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18(2).

10 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18(7). As to the meaning of 'United Kingdom' see PARA 1 note 2. The Territorial Waters Jurisdiction Act 1878 s 3 (restriction on prosecutions) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1056) does not apply to any proceedings for an offence under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18: reg 18(8).

11 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18(3). Such a person is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine: see reg 18(3). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

12 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18(4).

13 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18(5).

14 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 18(6).

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615. Publicity regarding projects in other EEA states having a significant effect on the environment in the transboundary area.

Where the Secretary of State¹ receives² from another EEA state³ information which that EEA state has gathered from the developer of a combustion installation⁴ in that EEA state which is likely to have significant effects on the environment of the transboundary area⁵, the Secretary of State must:

- 1462 (1) enter into consultations with that EEA state regarding, inter alia, the potential significant negative effects of the proposed combustion installation on the environment of the transboundary area;
- 1463 (2) arrange for the information received from that EEA state to be made available, within a reasonable time, both to the authorities in the United Kingdom which he considers are likely to be concerned by the combustion installation by reason of their particular environmental responsibilities, and to the public;
- 1464 (3) ensure that those authorities and the public in the United Kingdom are given an opportunity, before a decision is reached, to forward to him their comments on the information supplied; and
- 1465 (4) send to the competent authority of the EEA state such comments as he receives⁶.

The Secretary of State must also, in so far as he has received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the EEA state, and in particular:

- 1466 (a) a copy of the permit and any conditions and subsequent amendments to it; and
- 1467 (b) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public⁷.

¹ As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

² I.e. pursuant to EC Council Directive 96/61 OJ L257, 10.10.96, p 26), art 17(1). Directive 96/61 is repealed and replaced by European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version): see PARAS 6, 18. References to the repealed Directive are to be construed as references to the new Directive: art 22.

³ As to the meaning of 'EEA state' see PARA 605 note 23.

⁴ As to the meaning of 'combustion installation' see PARA 605 note 1.

⁵ 'Transboundary area' means the area comprising the relevant area but excluding: (1) so much of the territorial sea of the United Kingdom as is adjacent to Scotland; and (2) the places above and below the waters referred to in head (1) above: Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 2 (definition added by SI 2007/938). As to the meaning of 'relevant area'

see PARA 605 note 1; and generally as to the territorial sea of the United Kingdom see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

6 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7A(1) (reg 7A added by SI 2007/938).

7 Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001, SI 2001/1091, reg 7A(2) (as added: see note 6).

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616. Greenhouse gas emissions permits for combustion installations; charging schemes in respect of offshore installations.

As from 21 April 2005, no person may carry out, among other things, activities of combustion installations with a rated thermal input¹ resulting in emissions of carbon dioxide² except under and to the extent authorised by a greenhouse gas emissions permit³. The Greenhouse Gas Emissions Trading Scheme Regulations 2005⁴, Part 2 of which deals with the grant, variation, transfer, surrender and revocation of such permits⁵, are discussed elsewhere in this title⁶. The Secretary of State⁷ may make, and from time to time revise, a scheme prescribing:

- 1468 (1) fees payable in respect of, or of applications for, a greenhouse gas emissions permit for an offshore installation⁸;
- 1469 (2) fees payable in respect of, or of applications for, the variation, transfer and surrender of such permits;
- 1470 (3) charges payable in respect of the subsistence of such permits;
- 1471 (4) charges payable in respect of, or in respect of applications for, the allocation of allowances to an operator⁹ of an offshore installation;
- 1472 (5) charges payable in respect of, or in respect of applications for, the retention of allowances by an operator of an offshore installation ceasing to carry on an activity to which they relate;
- 1473 (6) charges payable in respect of the revocation of a greenhouse gas emissions permit for an offshore installation; and
- 1474 (7) charges payable in respect of the subsistence of an account required to be held in the registry¹⁰ by an operator of an offshore installation¹¹.

The fees and charges prescribed¹² in such a scheme must be paid to the Secretary of State¹³.

The Secretary of State must take such steps as he considers appropriate for bringing the provisions of any charging scheme made by him which is for the time being in force to the attention of persons likely to be affected by it¹⁴.

1 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, Sch 1 para 1.1. See also PARA 260.

2 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, Sch 1 para 1.1. See also PARA 260.

3 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 7; and PARA 260.

4 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925: see PARA 260.

5 See the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, Pt 2 (regs 7-19); the text and notes 7-14; and PARA 260.

6 See PARA 260.

7 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

8 For these purposes, 'offshore installation' means an installation which is (or will be) situated in the area (together with places above and below it) comprising: (1) those parts of the sea adjacent to England and Wales from the low-water mark to the landward baseline of the United Kingdom territorial sea; (2) the United Kingdom territorial sea apart from those areas comprised in any controlled waters within the meaning of the Control of Pollution Act 1974 s 30A(1) (s 30A(1) relates to Scotland only and is outside the scope of this work); and (3) those areas of sea in any area for the time being designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636); 'installation' means (except where it appears in the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, Sch 1): (a) a stationary technical unit where one or more Schedule 1 activities are carried out; and (b) any other location on the same site where any other directly associated activities are carried out which have a technical connection with the activities carried out in the stationary technical unit and which could have an effect on greenhouse gas emissions and pollution; and references to an installation include references to part of an installation: reg 2(1). Generally as to the territorial sea of the United Kingdom see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

9 'Operator' means, subject to the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 2(2), in relation to an installation, the person who has control over its operation: reg 2(1). Where an installation has not been put into operation, the person who will have control over the operation of the installation when it is put into operation is to be treated as the operator of the installation; and where an installation has ceased to be in operation, the person who holds the greenhouse gas emissions permit which relates to the installation is to be treated as the operator of the installation: reg 2(2)(a), (b). Where a permit holder has ceased to be the operator of an installation to which a greenhouse gas emissions permit relates, references to the operator are to be read as references to the permit holder: reg 2(2)(c).

10 le the registry established under the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 26: see PARA 260.

11 Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 19(1) (amended by SI 2006/737). The Secretary of State must, on making or revising such a scheme, lay a copy of the scheme or of the revisions made to the scheme or, if he considers it more appropriate, the scheme as revised, before each House of Parliament: Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 19(3). Such a scheme may, in particular (1) make different provision for different cases, including different provision in relation to different persons in different circumstances or localities; (2) allow for reduced fees or charges payable in respect of greenhouse gas emissions permits granted to the same operator; (3) provide for the times at which and the manner in which the payments required by the scheme are to be made (subject to the requirements in the 2005 Regulations as to times at which payment is required); and (4) make such incidental, supplementary and transitional provisions as appears to the Secretary of State to be appropriate: reg 19(4).

12 For these purposes, 'prescribed' means specified in, or determined under, a scheme made under the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 19: reg 19(6).

13 Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 19(2).

14 Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925, reg 19(5).

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(E) EMERGENCY POLLUTION CONTROL

617. Prevention etc of pollution after accidents involving offshore installations.

Under the Pollution Prevention and Control Act 1999, the Secretary of State¹ may, in relation to offshore installations², by regulations³ make provision which, subject to any modifications that he considers appropriate, corresponds or is similar to any provision made by, or capable of being made under, the provisions of the Merchant Shipping Act 1995 which confer powers to prevent and reduce pollution, and the risk of pollution, by oil or other substances following an accident⁴ in relation to ships⁵. The Offshore Installations (Emergency Pollution Control) Regulations 2002⁶, the provisions of which are set out below⁷, are made under those powers.

The intervention powers conferred by the 2002 Regulations⁸ are exercisable where:

- 1475 (1) an accident⁹ has occurred; and
- 1476 (2) in the opinion of the Secretary of State the accident will or may cause significant pollution¹⁰ in the United Kingdom, United Kingdom waters¹¹ or in any designated area¹²; and
- 1477 (3) in the opinion of the Secretary of State the use of those powers is urgently needed¹³.

For the purpose of preventing or reducing pollution, or the risk of pollution, the Secretary of State, or such persons as may be authorised for the purpose by or on behalf of the Secretary of State¹⁴, may give directions as respects any offshore installation:

- 1478 (a) to the operator¹⁵ of the offshore installation; or
- 1479 (b) to the manager of the offshore installation; or
- 1480 (c) to any servant or agent of the operator of the offshore installation¹⁶.

Such directions may require the person to whom they are given to take, or refrain from taking, any action of any kind whatsoever, and without prejudice to the generality of this provision, directions may require that person:

- 1481 (i) to move or not to move the offshore installation, or any part of it, to or from a specified place or area, or over a specified route; or
- 1482 (ii) to unload or discharge, or not to unload or discharge, any oil or other substance; or
- 1483 (iii) to take or not to take specified¹⁷ remedial measures¹⁸.

If in the opinion of the Secretary of State the powers conferred on him to give such directions are, or have proved to be, inadequate for the purpose, the Secretary of State, or such persons as may be authorised for the purpose by or on behalf of the Secretary of State¹⁹, may, for the purpose of preventing or reducing pollution, or the risk of pollution, take, as respects the

offshore installation or its contents, any action of any kind whatsoever; and without prejudice to the generality of this provision the Secretary of State may:

- 1484 (A) take any such action as he has power to require to be taken by a direction under these provisions;
- 1485 (B) undertake operations for the sinking or destruction of the offshore installation, or any part of it, of a kind which is not within the means of any person to whom he can give directions; or
- 1486 (C) undertake operations which involve the taking over of control of the offshore installation, whether by boarding the offshore installation or entering and using any premises which appear to him to be premises from which the operations of the offshore installation may be controlled²⁰.

Every person concerned with compliance with directions given, or with action taken, under these provisions must use his best endeavours to avoid any risk to human life²¹.

A person who contravenes or fails to comply with any requirement of a direction given to him under the above provisions is guilty of an offence²² and liable to a fine²³. In proceedings for such an offence it is, however, a defence for the accused to prove either that he has used all due diligence²⁴ to ensure compliance with the direction or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life²⁵.

A person who intentionally obstructs any person who is acting on behalf of the Secretary of State in connection with the giving or service of a direction under the above provisions, acting in compliance with such a direction, or acting under the Secretary of State's powers or on behalf of him under the above provisions²⁶, is also guilty of an offence²⁷ and liable to the like penalties²⁸.

If any action duly taken²⁹ by a person in pursuance of a direction given to him under the above provisions, or any action taken by the Secretary of State or such persons as may be authorised for the purpose by or on behalf of the Secretary of State³⁰, was not reasonably necessary to prevent or reduce pollution or the risk of pollution or was such that the good it did or was likely to do was disproportionately less than the expense incurred, or damage suffered as a result of the action, a person incurring expense or suffering damage as a result of, or by himself taking, the action is entitled to recover compensation from the Secretary of State³¹. The Admiralty jurisdiction of the High Court includes jurisdiction to hear and determine any claim so arising³²; and in considering whether any person is so entitled to recover compensation from the Secretary of State, account must be taken of the extent and risk of pollution if the action had not been taken, the likelihood of the action being effective and the extent of the damage which has been caused by the action³³.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 As to the meaning of 'offshore installation' see PARA 188 note 2.

3 As to provisions about such regulations see the Pollution Prevention and Control Act 1999 s 3(3)-(6); and PARA 188.

4 The Pollution Prevention and Control Act 1999 s 3 refers to the Merchant Shipping Act 1995 ss 137-140, but these provisions have been repealed: see now s 108A, Sch 3A; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 686 et seq.

5 See the Pollution Prevention and Control Act 1999 s 3(1); and PARA 188.

6 I.e. the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, which came into force on 18 July 2002: see reg 1. See also PARA 188.

7 See the text and notes 8-33.

8 le the powers conferred by the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3: see the text and notes 9-21.

9 For these purposes, 'accident' means any occurrence causing material damage or a threat of material damage to an offshore installation: Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 2.

10 For these purposes, 'pollution' includes pollution by oil or any other substance liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, or by any other substance listed in the Merchant Shipping (Prevention of Pollution: Substances Other than Oil) (Intervention) Order 1997, SI 1997/1869, reg 2, Schedule (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 686): Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 2.

11 For these purposes, 'United Kingdom waters' has the same meaning as in the Merchant Shipping Act 1995 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 48 note 10): Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 2.

12 le within the meaning of the Continental Shelf Act 1964: see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636.

13 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3(1). The powers under reg 3(1) are subject to reg 3(6) (see the text and note 21): reg 3(1).

14 See the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3(5).

15 'Operator' in relation to an offshore installation means any person who operates the offshore installation and includes any person who owns it at the time any powers conferred by the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, are exercised in relation to the offshore installation: reg 2.

16 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3(2). If the Secretary of State (or a person authorised under reg 3(5)) is satisfied that a company or other body, which is the operator of an offshore installation, is not one to whom the Companies Act 2006 s 1139(2) (service of documents on overseas company) or s 1139(1), (4) (service of documents) (see **COMPANIES** vol 15 (2009) PARA 1836) applies so as to authorise the service of a direction on that body under either of those provisions, he may give a direction under the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3 to that body, by serving the direction on any person, being a servant or agent of that body, who appears to the Secretary of State to be in charge of the offshore installation: see reg 6(1); and the Interpretation Act 1978 s 17(2)(a). For the purposes of giving or serving a direction under the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3 to or on any person on a ship or offshore installation, a person acting on behalf of the Secretary of State has the right to go on board the ship or offshore installation: reg 6(2). As to the application of reg 6 to Northern Ireland see reg 6(3).

17 For these purposes, 'specified' in relation to a direction under the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3, means specified by the direction: reg 3(7).

18 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3(3).

19 See note 14.

20 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3(4).

21 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3(6).

22 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 5(1).

23 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 5(4). Such a person is liable on summary conviction to a fine not exceeding £50,000, or on conviction on indictment to a fine: see reg 5(4).

24 le subject to the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3(6): see the text and note 21.

25 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 5(3).

- 26 le acting under the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3(4), (5).
- 27 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 5(2).
- 28 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 5(4).
- 29 Any reference in the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 4 to the taking of any action includes a reference to a compliance with a direction not to take some specified action: reg 4(3).
- 30 le under the Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 3(4), (5).
- 31 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 4(1).
- 32 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 4(4). In Scotland, such jurisdiction is included in the Admiralty jurisdiction of the Court of Session: reg 4(4).
- 33 Offshore Installations (Emergency Pollution Control) Regulations 2002, SI 2002/1861, reg 4(2).

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B. CONSERVATION OF HABITATS

618. Control of activities under licence.

Where the Secretary of State¹ is satisfied that anything done, being done or proposed to be done pursuant to a Petroleum Act licence², consent³, authorisation⁴ or approval⁵:

- 1487 (1) has had, is having, or is likely to have an adverse effect on the integrity of a relevant site⁶; or
- 1488 (2) has caused, is causing, or is likely to cause deterioration of natural habitats⁷ or the habitats of species in such a site or disturbance of species for which that site may be or has been designated or classified pursuant to either the Wild Birds Directive⁸ or the Habitats Directive⁹, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive; and
- 1489 (3) steps can be taken to avoid, reverse, reduce or eliminate that effect, deterioration or disturbance,

he must¹⁰ give a direction in writing requiring the person to whom it is addressed to take such steps or refrain from taking such steps as may be specified in the direction¹¹. Without prejudice to the generality of the above provision, a direction so given may require within such period as may be specified in the direction:

- 1490 (a) the submission to the Secretary of State for his approval of a plan of the steps to be taken;
- 1491 (b) the carrying out of a plan of the kind referred to in head (a) above which has been approved by the Secretary of State;
- 1492 (c) the installation on a fixed or floating structure used in connection with offshore oil and gas activities¹² of such equipment as may be specified in the direction; or
- 1493 (d) the carrying out of a modification of such a structure or the manner in which it is operated¹³.

Prior to any direction being so given the Secretary of State must consult the appropriate nature conservation body¹⁴ as to the steps to be specified in the direction¹⁵.

Any direction given pursuant to these provisions may revoke or modify the terms and conditions of a consent, authorisation or approval¹⁶. It must be in writing and does not have effect unless it has been served¹⁷ on the person to whom it is addressed¹⁸. The Secretary of State may not give a direction to any person unless:

- 1494 (i) he has served on that person a copy of a draft of the direction that he is proposing to give;
- 1495 (ii) that person has been afforded a reasonable opportunity of making representations regarding the content of the proposed direction; and

1496 (iii) the Secretary of State has taken into account any representations made by that person¹⁹;

but this does not apply in a case of urgency where the Secretary of State is of the opinion that the giving of a direction is necessary for the prescribed²⁰ purposes²¹.

A direction must also be given under these provisions in respect of an area which is not a relevant site, but as to which the Secretary of State, having consulted the appropriate nature conservation body, is of the opinion that it would be likely to be classified as a special protection area pursuant to the relevant provision of the Wild Birds Directive²² where the Secretary of State is satisfied that anything done, being done or proposed to be done pursuant to a Petroleum Act licence, consent, authorisation or approval:

1497 (A) has had, is having, or is likely to have an adverse effect on the integrity of that area; or

1498 (B) has caused, is causing, or is likely to cause pollution²³ or deterioration of natural habitats or disturbance of species for which that site is likely to be classified in so far as such disturbance could be significant in relation to the objectives of that provision of the Wild Birds Directive; and

1499 (C) steps can be taken to avoid, reverse, reduce or eliminate that effect, pollution, deterioration or disturbance²⁴.

A direction given pursuant to these provisions may be modified or revoked by a further direction given by the Secretary of State²⁵.

Where a direction pursuant to the above provisions has been served on a person by the Secretary of State, the Secretary of State must review the appropriateness of the direction if requested to do so by that person²⁶; but he is only bound to carry out a review pursuant to such a request where, in the case of the first request to review it, that request is made no earlier than the first anniversary of the giving of the direction and in relation to any subsequent request, the period of one year has elapsed since a request was last made²⁷. Where, having so carried out a review of a direction, the Secretary of State is satisfied that the direction is no longer appropriate, he must modify or revoke it²⁸. He must give notice in writing to the applicant of any decision made under these provisions²⁹.

Any person aggrieved by a direction given to him, or by any decision in relation to that direction, may appeal to the court³⁰. Such an appeal must be made within 28 days of written notification of the direction or decision in question³¹. Unless the court otherwise orders, any direction or decision of the Secretary of State which is the subject of such an appeal remains in force pending the final disposal of that appeal³².

A person who fails, without reasonable excuse, to comply with a direction given in accordance with the provisions set out above is guilty of an offence³³ and liable to a fine³⁴. Proceedings for such an offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom³⁵; but no prosecution may be commenced in England and Wales except by the Secretary of State or with his consent³⁶. Where the commission by any person of such an offence is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person³⁷.

Generally the conservation of natural habitats is dealt with elsewhere in this work³⁸.

1 As to the Secretary of State see PARA 58. See also **FUEL AND ENERGY** vol 19(1) (2007 Reissue) PARA 601 note 1.

2 As to the meaning of 'Petroleum Act licence' see PARA 583 note 5.

- 3 As to the meaning of 'consent' for these purposes see PARA 584 note 2.
- 4 As to the meaning of 'authorisation' see PARA 584 note 3.
- 5 As to the meaning of 'approval' see PARA 584 note 4.
- 6 As to the meaning of 'relevant site' see PARA 584 note 6.
- 7 As to the meaning of 'natural habitats' see PARA 584 note 6.
- 8 *le* EEC Council Directive 79/409 (OJ L103, 25.04.79, p 1) on the conservation of wild birds: see PARA 582 note 6.
- 9 *le* EEC Council Directive 92/43 (OJ L206, 22.07.92, p 7) on the conservation of natural habitats and wild fauna and flora: see PARA 582 note 5.
- 10 *le* subject to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(3), reg 7(4), (5), (6): see the text and notes 16-19.
- 11 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(1) (reg 7(1)-(3), (9) amended by SI 2007/77).
- 12 As to the meaning of 'offshore oil and gas activities' see PARA 582 note 3.
- 13 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(2) (as amended: see note 11).
- 14 As to the meaning of 'appropriate nature conservation body' see PARA 584 note 9.
- 15 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(3) (as amended: see note 11).
- 16 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(4).
- 17 Any notice or other document required or authorised to be given to, or served on, any person under the 2001 Regulations may be given or served by (1) delivering it to that person; (2) leaving it at his proper address; or (3) sending it to his proper address by the post: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 20(1). Any notice or other document required or authorised to be served on, or given to, any body corporate or unincorporated association other than a partnership must be duly given to, or served on, the secretary or clerk or other similar officer of that body: reg 20(2). Any notice or other document required or authorised to be served on, or given to, any partnership (including a Scottish partnership) must be duly given or served on, or given to, a partner or a person having the control or management of the partnership business: reg 20(3). For these purposes, the proper address of any person on whom or to whom any such notice or document is to be served or given is his last known address except that such address is: (a) in the case of a body corporate or its secretary or clerk, the address of the registered office or principal office of the body corporate; (b) in the case of an unincorporated association (other than a partnership) or its secretary or clerk, the address of the principal office of the association; and (c) in the case of a partnership (including a Scottish partnership) or a person having control or the management of the partnership business, the address of the principal office of the partnership; and for these purposes the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: reg 20(4). As to the meaning of 'United Kingdom' see PARA 1 note 2.
- Wherever a person is required under the 2001 Regulations to serve or give any notice or other document in writing, that requirement may be satisfied by the use of such means of electronic communication as the Secretary of State may determine: reg 21. 'Electronic communication' means the same as in the Electronic Communications Act 2000 (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 616); and 'address', in relation to electronic communication, includes any number or address used for the purposes of such communication: Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 2(1).
- 18 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(5).
- 19 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(6).
- 20 *le* for the purposes set out in the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(1) (see the text and notes 1-11) or reg 7(9) (see the text and notes 22-24).
- 21 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(7).

- 22 le pursuant to EEC Council Directive 79/409 (OJ L103, 25.4.79, p 1) art 4. As to EEC Council Directive see PARAS 18, 54.
- 23 'Pollution' is not defined for these purposes.
- 24 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(9) (as amended: see note 11).
- 25 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 7(8).
- 26 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 8(1).
- 27 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 8(2).
- 28 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 8(3).
- 29 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 8(4).
- 30 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 9(1). 'Court' means (1) in respect of a direction or decision relating to the English area, the High Court; (2) in respect of a direction or decision relating to the Scottish area, the Court of Session; or (3) in respect of a direction or decision relating to the Northern Irish area, the High Court in Northern Ireland: reg 9(2). The expressions 'English area', 'Scottish area' and 'Northern Irish Area' have the same meaning as in the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1656 note 6): Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 9(3). Where the direction or decision relates to activities in more than one of the areas referred to in reg 9(2), then any of the courts having jurisdiction in those areas has jurisdiction in relation to the decision in question: reg 9(4).
- 31 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 9(6).
- 32 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 9(5).
- 33 See the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 19(1) (substituted by SI 2007/1842).
- 34 See the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 19(2) (amended by SI 2007/1842). Such a person is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: see the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 19(2) (as so amended). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. Where an offence under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 19 by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: reg 19(4). Where the affairs of a body corporate are managed by its members, reg 19(4) applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 19(5).
- 35 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 19(7). The Territorial Waters Jurisdiction Act 1878 s 3 (restriction on prosecutions) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1056) does not apply to any proceedings for an offence under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 19: reg 19(8).
- 36 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 19(9).
- 37 Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 19(6).
- 38 See **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/9. ENVIRONMENTAL DUTIES IN FUEL AND ENERGY SECTORS/(3) PETROLEUM PRODUCTION/(ii) Offshore Workings and Installations/B. CONSERVATION OF HABITATS/619. Conservation of natural habitats etc and protection of species in the offshore marine area; in general.

619. Conservation of natural habitats etc and protection of species in the offshore marine area; in general.

The Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007¹ make provision for implementing the Wild Birds Directive² and the Habitats Directive³ in relation to the offshore marine area⁴, offshore marine installations⁵ and certain ships and aircraft⁶. Those regulations:

- 1500 (1) impose a duty on competent authorities exercising functions relevant to marine conservation to do so in such a way as to secure compliance with the requirements of the Wild Birds Directive and the Habitats Directive⁷;
- 1501 (2) make provision for the selection, registration and notification of sites in the offshore marine area to be protected under the Habitats and Wild Birds Directives ('European offshore marine sites')⁸;
- 1502 (3) make provision about the management of European offshore marine sites, including provision enabling management schemes to be made for those sites⁹, provision requiring competent authorities to establish conservation measures in respect of special areas of conservation in the offshore marine area¹⁰ and provision requiring competent authorities to exercise their functions to secure that steps are taken to avoid the disturbance of species and deterioration of habitat in respect of specified offshore marine sites¹¹;
- 1503 (4) create offences for the protection of wild birds, animals and plants, which in some instances are subject to defences¹²;
- 1504 (5) require the Secretary of State to make arrangements for surveillance and monitoring of species and habitats in the offshore marine area and to take further action for the protection of species, in the light of that surveillance or monitoring¹³;
- 1505 (6) make provision for the licensing of activities which would otherwise be offences under head (4) or head (5) above¹⁴;
- 1506 (7) give to the Secretary of State and competent authorities power to appoint or make arrangements for the appointment of persons ('wildlife officers') to investigate offences under the regulations¹⁵; and
- 1507 (8) deal with a number of miscellaneous matters including education, research and reporting to the European Commission on the implementation of the Habitats Directive¹⁶.

Approvals, authorisations, consents and licences under the Petroleum Act 1998 are, however, excluded from the requirement to make an appropriate assessment under the 2007 Regulations of the implications for a European offshore marine site or a European site¹⁷ before the plan or project in question is authorised¹⁸ and from the requirement to review certain authorisations granted before a site became a European offshore marine site or a European site¹⁹. As already discussed, such approvals, authorisations, consents and licences are subject to the requirements of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001²⁰.

Generally the conservation of natural habitats is dealt with elsewhere in this work²¹.

- 1 le the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, which came into force on 21 August 2007: reg 1. See further **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 736.
- 2 le EEC Council Directive 79/409 (OJ L103, 25.4.79, p 1) on the conservation of wild birds: see PARAS 18, 54; **ANIMALS** vol 2 (2008) PARAS 994, 1006; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728.
- 3 le EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) on the conservation of natural habitats and wild fauna and flora: see PARAS 18, 54; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq.
- 4 For these purposes, 'offshore marine area' means (1) any part of the sea bed and subsoil situated in any area designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636); and (2) any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man): Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 2(2). Generally as to the territorial sea of the United Kingdom see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.
- 5 For these purposes, 'offshore marine installation' means any artificial island, installation or structure (other than a ship) which is situated (1) in any part of the waters in any area designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636); or (2) in any part of the waters in any area designated under the Energy Act 2004 s 84(4) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1310): Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 2(2).
- 6 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842; the text and notes 7-20; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 736.
- 7 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 6.
- 8 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 7-17.
- 9 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 18-21 (reg 19 amended by SI 2010/490).
- 10 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 22.
- 11 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 23.
- 12 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, Pt 3 (regs 33-43) (regs 39, 40 amended by SI 2009/7). For supplementary provisions relating to criminal offences see the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 63-66.
- 13 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 44-47 (amended by SI 2009/7). Subject to the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 49(11) (licensing), a person on an offshore marine installation commits an offence if he deliberately introduces into any relevant part of the waters in any area designated under the Continental Shelf Act 1964 s 1(7) any live animal or plant of a kind having a natural range that does not include those waters: see the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 48(1)(a).
- 14 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, Pt 5 (regs 49-51).
- 15 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 52-62.
- 16 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 67-74.
- 17 As to European sites see the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 24.
- 18 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 25(6) (c).
- 19 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 27(6) (c).
- 20 See the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, regs 1-9, 19-21; and PARAS 582-584, 618.
- 21 See **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq.

UPDATE

619 Conservation of natural habitats etc and protection of species in the offshore marine area; in general

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and WATER AND WATERWAYS vol 100 (2009) PARA 30F.3.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(1) INTRODUCTION/620. In general.

10. WASTE MANAGEMENT

(1) INTRODUCTION

620. In general.

The regulation of waste¹ on land² is primarily³ provided for by Part II of the Environmental Protection Act 1990⁴, replacing the former regime under the Control of Pollution Act 1974⁵.

Under the Environmental Protection Act 1990, there are waste regulation authorities (in practice, the Environment Agency)⁶, waste disposal authorities⁷ and waste collection authorities⁸. Waste regulation authorities were previously mainly concerned with the operation and enforcement of the system of waste management licensing but this system has now been absorbed into and replaced by the environmental permitting regime⁹. Waste disposal authorities were for some time under the Environmental Protection Act 1990 regime not concerned with actual disposal of waste, this function having been transferred to waste disposal companies, but the relevant provisions were repealed¹⁰. Waste collection authorities are responsible for the collection of waste¹¹.

The Environmental Protection Act 1990 and subordinate legislation made under it prohibit the unauthorised or harmful deposit, storage, treatment or disposal of waste¹² and previously provided for the system of waste management licences which has now been replaced by the environmental permitting regime¹³. A duty of care is imposed on any person who imports, produces, carries, keeps, treats or disposes of controlled waste, or, as a broker, has control of such waste¹⁴. Increased importance is given to the recycling of waste¹⁵.

1 As to the meaning of 'waste' see PARA 623.

2 'Land' includes land covered by waters where the land is above the low water mark of ordinary spring tides; and references to land on which controlled waste or extractive waste is treated, kept or deposited are references to the surface of the land (including any structure set into the surface): Environmental Protection Act 1990 s 29(1), (8) (s 29(8) amended by SI 2009/1799). As to the meaning of 'controlled waste' see PARA 624. As to low water mark see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

3 Other controls include the integrated pollution control regime (see PARA 158 et seq), the pollution prevention and control permitting system (see PARAS 186-188), controls in respect of statutory nuisances (see **NUISANCE** vol 78 (2010) PARA 155 et seq), controls over water pollution (see PARA 270 et seq), controls over radioactive substances (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1436 et seq), and planning legislation (see generally **TOWN AND COUNTRY PLANNING**). See also PARA 33 et seq. As to the transport of waste see the Control of Pollution (Amendment) Act 1989; and PARA 709 et seq. As to litter and graffiti etc see PARA 717 et seq.

4 Ie the Environmental Protection Act 1990 Pt II (ss 29-78). The provisions of Pt II do not apply in relation to the Isles of Scilly, although an order may be made providing for the application of any of those provisions to those Isles: see s 76 (substituted by the Environment Act 1995 s 118(3)). At the date at which this volume states the law no such order had been made.

5 Ie the Control of Pollution Act 1974 Pt I (ss 11-30).

Certain provisions of the Control of Pollution Act 1974 which relate to the collection and disposal of waste are still in force so far as they relate to industrial waste: see ss 12, 13, 14; and PARAS 693, 695, 697.

As to provisions of the Control of Pollution Act 1974 relating to street cleaning see ss 22, 23; and PARAS 724-725.

As to the establishment of joint waste authorities see the Local Government and Public Involvement in Health Act 2007 Pt 11 (ss 205-211); and PARA 621.

6 Any reference in the Environmental Protection Act 1990 Pt II to a waste regulation authority in relation to England and Wales is a reference to the Environment Agency: s 30(1)(a) (s 30(1) substituted by the Environment Act 1995 Sch 22 para 62). As to the Environment Agency see PARA 68 et seq. Any reference to the area of a waste regulation authority is accordingly to be taken as a reference to the area in relation to which the Environment Agency exercises its functions or, in the case of any particular function, the function in question: Environmental Protection Act 1990 s 30(1) (as so substituted).

7 The following authorities are waste disposal authorities:

- 19 (1) for any non-metropolitan county in England, the county council (Environmental Protection Act 1990 s 30(2)(a));
- 20 (2) in Greater London: (a) for the area of a London waste disposal authority, the authority constituted as the waste disposal authority for that area; (b) for the City of London, the Common Council of the City of London; (c) for any other London borough, the council of the borough (s 30(2)(b));
- 21 (3) in the metropolitan county of Greater Manchester: (a) for the metropolitan district of Wigan, the district council; (b) for all other areas of the county, the authority constituted as the Greater Manchester Waste Disposal Authority (s 30(2)(c));
- 22 (4) for the metropolitan county of Merseyside, the authority constituted as the Merseyside Waste Disposal Authority (s 30(2)(d));
- 23 (5) for any district in any other metropolitan county in England, the council of the district (s 30(2)(e));
- 24 (6) for any county or county borough in Wales, the council of the county or county borough (s 30(2)(f) (substituted by the Local Government (Wales) Act 1994 Sch 9 para 17)).

Disposal authorities are similarly defined for the purposes of the Control of Pollution Act 1974: see s 30(1) (definition substituted by SI 1985/1884); the Control of Pollution Act 1974 s 30(2A)-(2D) (added by SI 1985/1884); and the Control of Pollution Act 1974 s 30(6) (added by the Local Government (Wales) Act 1994 Sch 9 para 10). As from a day to be appointed, the Control of Pollution Act 1974 s 30 is repealed by the Environmental Protection Act 1990 Sch 16 Pt II. At the date at which this volume states the law no such day had been appointed.

In the Environmental Protection Act 1990 s 30, references to particular authorities having been constituted as waste disposal authorities are references to their having been so constituted by the Waste Regulation and Disposal (Authorities) Order 1985, SI 1985/1884, made by the Secretary of State under the Local Government Act 1985 s 10 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 17), and the reference to London waste disposal authorities is a reference to the authorities named in the Waste Regulation and Disposal (Authorities) Order 1985, SI 1985/1884, Sch 1 Pts I-V; and the Environmental Protection Act 1990 s 30 has effect subject to any order made under the Local Government Act 1985 s 10: Environmental Protection Act 1990 s 30(4) (amended by the Environment Act 1995 Sch 22 para 62(3), Sch 24).

8 For the purposes of the Environmental Protection Act 1990 Pt II, the following authorities are waste collection authorities:

- 25 (1) for any district in England not within Greater London, the council of the district (s 30(3)(a) (amended by the Local Government (Wales) Act 1994 Sch 9 para 17, Sch 18));
- 26 (2) in Greater London, the following: (a) for any London borough, the council of the borough; (b) for the City of London, the Common Council of the City of London; (c) for the Temples, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple respectively (Environmental Protection Act 1990 s 30(3)(b));
- 27 (3) for any county or county borough in Wales, the council of the county or county borough (s 30(3)(bb) (added by the Local Government (Wales) Act 1994 Sch 9 para 17(3), Sch 18)).

Collection authorities are similarly defined for the purposes of the Control of Pollution Act 1974: see s 30(1) (definition amended by SI 1985/1884); and the Control of Pollution Act 1974 s 30(6) (as added: see note 7). As to the prospective repeal of s 30 see note 7.

9 See PARA 662 et seq.

10 The provisions were the Environmental Protection Act 1990 s 32, Sch 2 which were repealed by the Clean Neighbourhoods and Environment Act 2005 Sch 5 Pt 4 in relation to England as from 18 October 2005 and in relation to Wales as from 16 March 2006: see the Clean Neighbourhoods and Environment Act 2005 (Commencement No 2, Transitional Provisions and Savings) (England and Wales) Order 2005, SI 2005/2896, art 3(g), (k); and the Clean Neighbourhoods and Environment Act 2005 (Commencement No 1 and Savings) (Wales) Order 2006, SI 2006/768, art 2(a), (d).

Under the Environmental Protection Act 1990 s 32, Sch 2 (repealed), the Secretary of State was required to give directions to certain waste disposal authorities before specified dates to form or participate in forming waste disposal companies (known as 'waste disposal contractors') and transfer to the companies so formed (by and in accordance with a scheme under Sch 2 (repealed)) the relevant part of their undertakings, and the authorities thus had power to form and hold securities in the companies so established: see s 32 (repealed). There were a number of restrictions and conditions and Sch 2 (repealed) contained provisions on such matters as the formation and status of companies, transfer schemes, tax and company provisions, planning permission issues, documentation, construction of agreements, effects on third parties, transfer of staff, information available for transfer purposes, terms of waste disposal contracts, procedure for putting such contracts out to tender and transfer of securities of companies. 'Waste disposal contractor' means a person who in the course of a business collects, keeps, treats or disposes of waste, being either:

- 28 (1) a company formed for all or any of those purposes by a waste disposal authority whether in pursuance of s 32 (repealed) or otherwise; or
- 29 (2) either a company formed for all or any of those purposes by other persons or a partnership or an individual,

and 'company' means a company as defined in the Companies Act 2006 s 1(1) (see **COMPANIES** vol 14 (2009) PARA 1) and 'formed', in relation to a company formed by other persons, includes the alteration of the company's articles so as to add, remove or alter a statement of the company's objects: Environmental Protection Act 1990 s 30(5) (amended by SI 2009/1941) (repealed).

Notwithstanding their repeal, the relevant provisions continue to have effect for the purposes of regulating: (a) the activities of a company which a waste disposal authority formed or participated in forming for the purposes of the collection of waste, or the disposal, keeping or treating of waste, where the company remains under the control of the waste disposal authority on 18 October 2005 (in relation to England) or on 16 March 2006 (in relation to Wales); and (b) the functions of a waste disposal authority in relation to such a company for as long as the company remains under the authority's control: see the Clean Neighbourhoods and Environment Act 2005 (Commencement No 2, Transitional Provisions and Savings) (England and Wales) Order 2005, SI 2005/2896, art 6 (amended by SI 2006/1002); and the Clean Neighbourhoods and Environment Act 2005 (Commencement No 1 and Savings) (Wales) Order 2006, SI 2006/768, art 5 (amended by SI 2006/2797).

11 As to the collection of waste see PARA 693 et seq.

12 See PARA 655. The 'disposal' of waste includes its disposal by way of deposit in or on land; waste is 'treated' when it is subjected to any process, including making it re-usable or reclaiming substances from it; and 'recycle' (and cognate expressions) must be construed accordingly: Environmental Protection Act 1990 s 29(1), (6). As to the meaning of 'process' see *Nurse v Morganite Crucible Ltd* [1989] AC 692, [1989] 1 All ER 113, HL (considering the same phrase in the context of the Factories Act 1961). Regulations made by the Secretary of State may prescribe activities as activities which constitute the treatment of waste for the purposes of the Environmental Protection Act 1990 Pt II or any provision of Pt II prescribed in the regulations: s 29(1), (7). At the date at which this volume states the law no such regulations had been made.

13 As to environmental permitting see PARA 662 et seq.

14 See PARA 645. As to the making of regulations which require developers and contractors of construction and demolition projects to prepare site waste management plans see the Clean Neighbourhoods and Environment Act 2005 s 54; and PARA 654.

15 See eg PARAS 628-629, 700.

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621. Joint waste authorities.

A proposal under the relevant provision of the Local Government and Public Involvement in Health Act 2007¹ is a proposal to the Secretary of State² that an authority be established for a specified³ area in England to discharge in that area the waste functions⁴ specified in the proposal⁵. Such a proposal⁶ may be made by (and only by) all the local authorities that are local waste authorities⁷ in relation to the area specified in the proposal⁸. Such a proposal may not be made if there is a local authority for the whole of the specified area which currently has all of the specified waste functions⁹. The Secretary of State may by regulations make provision as to (1) matters to be included in such a proposal; (2) information that must accompany a proposal¹⁰. Regulations under head (1) above may in particular provide that such a proposal must include proposals as to the number of members of the proposed authority¹¹; as to the number of members to be appointed by each local authority making the proposal; as to the procedure for appointing a chairman and a vice-chairman; for the costs of the proposed authority to be met by the local authorities making the proposal, and as to the basis on which the amount payable by each of the local authorities is to be determined¹². In making such a proposal the local authorities must have regard to any guidance from the Secretary of State as to what a proposal should seek to achieve; and matters that should be taken into account in formulating a proposal¹³.

A proposal may not be made by any local authorities¹⁴ unless the local authorities prepared a draft of the proposal; and each local authority took reasonable steps to consult the following about the draft: the relevant electors¹⁵; any interested person in the authority's area¹⁶.

Where the Secretary of State receives such a proposal¹⁷ he may by order implement the proposal with or without modifications¹⁸. An authority established by such an order¹⁹ is referred to²⁰ as a 'joint waste authority'²¹. Such an order may make provision enabling the Secretary of State to require the authority established by the order to submit to him a scheme for (a) the winding-up of the authority; and (b) the transfer of its functions, property, staff, rights and liabilities to appropriate local authorities²². The Secretary of State may by order provide for giving effect (with or without modification) to any scheme submitted to him under such provision²³ and for the dissolution of the authority²⁴. The Secretary of State may exercise his powers²⁵ only where (i) he receives a request to do so from all the appropriate local authorities; or (ii) he considers that it is necessary to do so²⁶. The Secretary of State may by order exclude any functions from those for which a joint waste authority was established²⁷. Such an order²⁸ may include incidental, consequential, transitional or supplementary provision²⁹. The power of the Secretary of State³⁰ to implement a proposal with modifications does not include power to (A) establish a joint waste authority for an area that is different from the area specified in the proposal; or (B) establish a joint waste authority to discharge waste functions³¹ that are not specified in the proposal³².

The Welsh Ministers³³ may by order make provision in relation to Wales applying any of the above provisions of the Local Government and Public Involvement in Health Act 2007³⁴ with the substitution for references to the Secretary of State of references to the Welsh Ministers; and such other modifications as they consider appropriate³⁵. Such an order³⁶ may include incidental, consequential or supplementary provision, including provision amending or modifying any enactment; and any instrument made under an enactment³⁷.

1 le the Local Government and Public Involvement in Health Act 2007 s 205.

2 As to the Secretary of State see PARA 58.

3 For these purposes, 'specified' means specified in the proposal: Local Government and Public Involvement in Health Act 2007 s 205(8).

4 For these purposes, 'waste function' means a function conferred on a local authority by or under (1) the Environmental Protection Act 1990 Pt II (ss 29-78) (waste on land) (see PARA 620 et seq); (2) the Environmental Protection Act 1990 Pt IV (ss 86-99) (litter etc) (see PARA 721 et seq); (3) the Waste and Emissions Trading Act 2003 s 32 (joint municipal waste management strategies: England) (see PARA 628); Local Government and Public Involvement in Health Act 2007 s 205(8). In Pt 11 (ss 205-211) 'local authority' means (a) a county council; (b) a district council; (c) a London borough council; (d) the Common Council of the City of London; (e) the sub-treasurer of the Inner Temple; (f) the under treasurer of the Middle Temple; (g) an authority established under the Local Government Act 1985 s 10 (joint arrangements for waste disposal functions) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 17); or (h) a joint waste authority established under the Local Government and Public Involvement in Health Act 2007 s 207 (see the text and notes 17-32): ss 205(9), 211.

5 Local Government and Public Involvement in Health Act 2007 s 205(1).

6 Ie under the Local Government and Public Involvement in Health Act 2007 s 205.

7 A local authority is a 'local waste authority' in relation to the specified area if (1) its area forms the whole or part of the specified area; and (2) it currently has one or more of the specified waste functions: Local Government and Public Involvement in Health Act 2007 s 205(3).

8 Local Government and Public Involvement in Health Act 2007 s 205(2).

9 Local Government and Public Involvement in Health Act 2007 s 205(4).

10 Local Government and Public Involvement in Health Act 2007 s 205(5). As to regulations made under s 205(5), (6) see the Joint Waste Authorities (Proposals) Regulations 2009, SI 2009/105; and see **LOCAL GOVERNMENT** vol 69 (2009) PARA 51.

11 A person may be a member of a joint waste authority (see the text and note 21) only if he is (1) a member of a local authority which would, but for the establishment of the joint waste authority, have one or more of the functions that the joint waste authority has; (2) the sub-treasurer of the Inner Temple or the under treasurer of the Middle Temple in a case where the sub-treasurer or the under treasurer would, but for the establishment of the joint waste authority, have one or more of the functions that the joint waste authority has: Local Government and Public Involvement in Health Act 2007 s 208.

12 Local Government and Public Involvement in Health Act 2007 s 205(6). See note 10.

13 Local Government and Public Involvement in Health Act 2007 s 205(7).

14 Ie under the Local Government and Public Involvement in Health Act 2007 s 205.

15 A person is a 'relevant elector' (1) in relation to a county council, district council or London borough council, if he is a local government elector for the council's area; (2) in relation to the Common Council of the City of London, if his name appears in a ward list published under the City of London (Various Powers) Act 1957 s 7 (see **LONDON GOVERNMENT**); (3) in relation to the sub-treasurer of the Inner Temple or the under treasurer of the Middle Temple, if his name appears in the ward list published with respect to the ward of Farrington Without in the City under the City of London (Various Powers) Act 1957 s 7; (4) in relation to an authority established under the Local Government Act 1985 s 10 (joint arrangements for waste disposal functions) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 17), if he is a relevant elector in relation to any local authority whose area forms part of the area for which the authority was established; (5) in relation to a joint waste authority established under the Local Government and Public Involvement in Health Act 2007 s 207 (see the text and note 21), if he is a relevant elector in relation to any local authority whose area forms the whole or part of the area for which the joint waste authority was established: s 206(2). For these purposes, 'local government elector' means a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts (see generally **ELECTIONS AND REFERENDUMS**): Local Government and Public Involvement in Health Act 2007 s 206(3).

16 Local Government and Public Involvement in Health Act 2007 s 206(1).

17 Ie a proposal under the Local Government and Public Involvement in Health Act 2007 s 205.

18 Local Government and Public Involvement in Health Act 2007 s 207(1).

- 19 le an order under the Local Government and Public Involvement in Health Act 2007 s 207(1).
- 20 le in the Local Government and Public Involvement in Health Act 2007 Pt 11 (ss 205-211).
- 21 Local Government and Public Involvement in Health Act 2007 ss 207(2), 211.
- 22 Local Government and Public Involvement in Health Act 2007 s 207(3). 'Appropriate local authority', in relation to a joint waste authority, means a local authority which would, but for the establishment of the joint waste authority, have one or more of the functions that the joint waste authority has: s 207(11).
- 23 le provision made by virtue of the Local Government and Public Involvement in Health Act 2007 s 207(3).
- 24 Local Government and Public Involvement in Health Act 2007 s 207(4).
- 25 le under the Local Government and Public Involvement in Health Act 2007 s 207(4).
- 26 Local Government and Public Involvement in Health Act 2007 s 207(5).
- 27 Local Government and Public Involvement in Health Act 2007 s 207(6).
- 28 le an order under the Local Government and Public Involvement in Health Act 2007 s 207.
- 29 Local Government and Public Involvement in Health Act 2007 s 207(7). The provision that may be made by virtue of s 207(7) includes in particular provision (1) for the transfer of property, rights or liabilities; (2) for legal proceedings commenced by or against any authority to be continued by or against an authority to whom property, rights or liabilities are transferred; (3) for the transfer of staff, compensation for loss of office, pensions and other staffing matters; (4) for treating any authority to whom a transfer is made for any purposes as the same person in law as the authority from whom the transfer is made: s 207(8). The provision that may be made by virtue of s 207(7) includes provision amending, modifying, excluding or applying (with or without modifications) any enactment or any instrument made under any enactment: s 207(9).
- 30 le under the Local Government and Public Involvement in Health Act 2007 s 207(1).
- 31 As to the meaning of 'waste function' see note 4; definition applied by the Local Government and Public Involvement in Health Act 2007 s 207(11).
- 32 Local Government and Public Involvement in Health Act 2007 s 207(10).
- 33 As to the Welsh Ministers see PARA 59.
- 34 le the Local Government and Public Involvement in Health Act 2007 ss 205-208.
- 35 See the Local Government and Public Involvement in Health Act 2007 s 210(1). The reference in s 210(1) to any provisions of ss 205-208 includes a reference to any provisions of Pt 17 (ss 240-246) so far as relating to any of those provisions: s 210(3). At the date at which this volume states the law, s 210 is in force only for certain purposes: see the Local Government and Public Involvement in Health Act 2007 (Commencement) (Wales) Order 2008, SI 2008/591.
- 36 le an order under the Local Government and Public Involvement in Health Act 2007 s 210.
- 37 Local Government and Public Involvement in Health Act 2007 s 210(2).

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622. European Union legislation.

There is a considerable body of European Union legislation relating to waste management and disposal, and making provision with respect to certain specific types of waste¹. There are also provisions relating to the transport, import and export of waste². Waste management falls within the regime of integrated pollution prevention and control³. EU waste legislation is implemented in England and Wales by the Environmental Protection Act 1990, the Environment Act 1995, the Pollution Prevention and Control Act 1999 and numerous regulations under those statutes⁴, as well as by certain provisions of the Waste and Emissions Trading Act 2003⁵. In particular, the definition of 'waste' as set out in the EU legislation has been adopted⁶.

1 See PARA 33 et seq.

2 See PARA 44.

3 See PARAS 6, 186-188.

4 See PARA 623 et seq.

5 As to strategies for reducing biodegradable municipal waste for landfill see the Waste and Emissions Trading Act 2003 Pt 1 Ch 1 (ss 1-28); and PARA 631 et seq.

6 See PARA 623.

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623. Meaning of 'waste'.

For the purposes of Part II of the Environmental Protection Act 1990¹, 'waste' means any substance² or object in certain categories³ which the holder⁴ discards or intends or is required to discard⁵.

The categories are:

- 1508 (1) production or consumption residues not otherwise specified in heads (2) to (16) below⁶;
- 1509 (2) off-specification products⁷;
- 1510 (3) products whose date for appropriate use has expired⁸;
- 1511 (4) materials spilled, lost or having undergone other mishap, including any materials, equipment, etc, contaminated as a result of the mishap⁹;
- 1512 (5) materials contaminated or soiled as a result of planned actions (such as residues from cleaning operations, packing materials, containers, etc)¹⁰;
- 1513 (6) unusable parts (such as reject batteries, exhausted catalysts, etc)¹¹;
- 1514 (7) substances which no longer perform satisfactorily (such as contaminated acids, contaminated solvents, exhausted tempering salts, etc)¹²;
- 1515 (8) residues of industrial processes (such as slags, still bottoms, etc)¹³;
- 1516 (9) residues from pollution abatement processes (such as scrubber sludges, baghouse dusts, spent filters, etc)¹⁴;
- 1517 (10) machining or finishing residues (such as lathe turnings, mill scales, etc)¹⁵;
- 1518 (11) residues from raw materials extraction and processing (such as mining residues, oil field slops, etc)¹⁶;
- 1519 (12) adulterated materials (such as oils contaminated with PCBs, etc)¹⁷;
- 1520 (13) any materials, substances or products whose use has been banned by law¹⁸;
- 1521 (14) products for which the holder has no further use (such as agricultural, household, office, commercial and shop discards, etc)¹⁹;
- 1522 (15) contaminated materials, substances or products resulting from remedial action with respect to land²⁰;
- 1523 (16) any materials, substances or products which are not contained in the above categories²¹.

¹ ie the Environmental Protection Act 1990 Pt II (ss 29-78).

² 'Substance' means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour: Environmental Protection Act 1990 s 29(11).

³ ie the categories set out in the Environmental Protection Act 1990 s 75(10), Sch 2B (added by the Environment Act 1995 Sch 22 paras 88, 95). The categories of waste set out in the Environmental Protection Act 1990 s 75(10), Sch 2B, which reproduce those in EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) (but see now also European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) which is in effect a codification of Directive 75/442 and its amendments) (see PARAS 33, 622), are those set out in heads (1)-(16) in the text. The categories are also the same as those set out in the Waste Management Licensing Regulations 1994, SI 1994/1056, reg 1(3), Sch 4 Pt II (reg 1(3) substituted by SI 2007/3538). See *Interpretative Communication on waste and by-products* (COM (2007) 59). See also the List of Wastes (England) Regulations 2005, SI 2005/895 (amended by SI 2005/1673), which implement in England EC Commission Decision 2000/532 (OJ L226, 6.9.2000, p 3) establishing a list of wastes (amended by EC Commission Decision 2001/118 (OJ L47, 16.2.2001, p 1); EC Commission Decision 2001/119 (OJ L47, 16.2.2001, p 32); EC Commission Decision

2001/573 (OJ L203, 28.7.2001, p 18)). The List of Wastes was introduced by the List of Wastes (England) Regulations 2005, SI 2005/895, and replaces the European Waste Catalogue; it provides for the classification of wastes and determines whether they are hazardous wastes (see PARA 624), and it includes provisions for the coding of wastes. See, in particular, the Lists of Wastes (England) Regulations 2005, SI 2005/895, reg 3. See also European Parliament and EC Council Directive 2008/98 (OJ L312, 22.11.2008, p 3) on waste and repealing certain Directives; and PARA 33.

4 For these purposes, 'holder' means the producer of the waste or the person who is in possession of it; and 'producer' means any person whose activities produce waste or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste: Environmental Protection Act 1990 s 75(2) (substituted by the Environment Act 1995 Sch 22 para 88(1), (2)). Where a ship sinks and its cargo is discarded, the owner of the ship is a person whose activities produce waste and is therefore a 'producer' and a 'holder' of waste: Case C-188/07: *Commune de Mesquer v Total France SA* [2009] All ER (EC) 525, [2008] 3 CMLR 445, [2008] All ER (D) 308 (Jun), ECJ.

5 Environmental Protection Act 1990 s 75(2) (as substituted: see note 4). To the extent still relevant (see PARA 620), for the purposes of the Control of Pollution Act 1974 Pt I (ss 11-30), 'waste' has the same meaning as it has in the Environmental Protection Act 1990 Pt II by virtue of s 75(2): Control of Pollution Act s 30(1) (amended by the Environment Act 1995 Sch 22 para 27(b), (c), Sch 24). See generally European Commission *Interpretative Communication on waste and by-products* (COM (2007) 59 final) which reviews the case law and seeks to clarify the legal principles that have been adopted in defining 'waste'.

The Environmental Protection Act 1990 s 75(2) is substituted and Sch 2B is added for the purpose of assigning to 'waste' in Pt II the meaning which it has in EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) (see note 3; and PARAS 33, 622), and those provisions are to be construed accordingly: see the Environmental Protection Act 1990 s 75(11), (12) (added by the Environment Act 1995 Sch 22 para 88(4); and the Environmental Protection Act 1990 s 75(12) amended by SI 2006/937).

The definition of 'waste' in EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) has been held to be of direct application: see Cases C-304/94, C-330/94, C-342/94, C-224/95: *Criminal proceedings against Tombesi* [1997] All ER (EC) 639, [1997] ECR I-3561, ECJ. As to the United Kingdom's failure properly to implement EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) see Case C-62/03: *EC Commission v United Kingdom* (2005) Times, 6 January, [2004] All ER (D) 279 (Dec), ECJ.

The term 'waste' is not to be interpreted restrictively, and includes a substance which has been disposed of and recovered: Cases C-418/97, C-419/97: *ARCO Chemie Nederland Ltd v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, Vereniging Dorpsbelang Hees v Director van de dienst Milieu en Water van de provincie Gelderland* [2002] QB 646, [2003] All ER (EC) 237, ECJ.

Waste does not necessarily exclude substances which are capable of economic re-utilisation: Cases C-206/88, C-207/88: *Vessoso and Zanetti v Ministero Public of Italy* [1990] ECR I-1461, ECJ; Case C-422/92: *EC Commission v Germany* [1995] ECR I-1097, [1996] 1 CMLR 383, ECJ; Cases C-304/94, C-330/94, C-342/94, C-224/95: *Criminal proceedings against Tombesi* [1997] All ER (EC) 639, [1997] ECR I-3561, ECJ. As to the concept of 'discarding' see Case C-129/96: *Inter-Environnement Wallonie ASBL v Région Wallonne* [1998] All ER (EC) 155, [1997] ECR I-7411, ECJ. See *A-G's Reference (No 5 of 2000)* [2001] EWCA Crim 1077, [2001] 2 CMLR 1025, [2001] All ER (D) 71 (May) (a substance does not have to be subjected to a recovery or disposal operation in order for it to be discarded and therefore capable of being waste). The collection and treatment of waste so that it can be used as a raw material in the production of steel does not constitute recycling, and so such material remains waste material: however, the transformation of that waste into pieces of steel does constitute recycling, and so those pieces of steel are not waste: Case C-444/00: *R (on the application of Mayer Parry Recycling Ltd) v Environment Agency* [2005] All ER (EC) 647, [2004] 1 WLR 538, ECJ. The re-use of surplus granite which was stored at a quarry was uncertain and foreseeable only in the longer term; accordingly, it had been 'discarded' and was therefore waste: Case C-9/00: *Application by Palin Granit Oy* [2003] All ER (EC) 366, [2002] ECR I-3533, [2002] 2 CMLR 560, ECJ. As to the meaning of 'discards' in the context of involuntary soil contamination caused by leaking petrol see Case C-1/03: *Van de Walle v Texaco Belgium SA* [2005] All ER (EC) 1139, [2005] Env LR 24, ECJ.

See also *Long v Brooke* [1980] Crim LR 109, Crown Court; *Kent County Council v Queenborough Rolling Mill Co Ltd* (1990) 89 LGR 306, 154 JP 530, DC; *Ashcroft v McErlain* (30 January 1985, unreported); *Thanet District Council v Kent County Council* [1993] Env LR 391; *Cheshire County Council v Armstrong's Transport (Wigan) Ltd* [1995] Env LR 62, [1995] Crim LR 162 (all cases decided under the Control of Pollution Act 1974 Pt I (ss 11-30) (see PARA 620), and now of doubtful authority). Compare the different approach under planning legislation in *Northavon District Council v Secretary of State for the Environment* (1980) 40 P & CR 332, [1981] JPL 114, DC; *R v Rotherham Metropolitan Borough Council, ex p Rankin* [1990] JPL 503, [1990] 1 PLR 93. See also the approach taken for tax purposes in *ICI Chemicals and Polymers Ltd v Customs and Excise Comrs* [1998] V & DR 310 (and cite lining containing waste held not to be waste, and so did not attract landfill tax). As to landfill tax see **LANDFILL TAX**.

As to whether the burning of fuel amounted to the burning of hazardous waste (see PARA 624) or the burning of non-waste fuel see *Castle Cement v Environment Agency* [2001] EWHC 224 (Admin), [2001] 2 CMLR 393.

See Case C-188/07: *Commune de Mesquer v Total France SA* [2009] All ER (EC) 525, [2008] 3 CMLR 445, [2008] All ER (D) 308 (Jun), ECJ.

Waste water which escaped from a sewerage network maintained by a statutory sewerage undertaker constitutes waste within the meaning of EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39): Case C-252/05: *R (on the application of Thames Water Utilities Ltd) v Bromley Magistrates Court (Environment Agency, interested party)* [2007] 1 WLR 1945, [2007] ECR I-3883, [2007] 3 CMLR 47, ECJ, implemented by *R (on the application of Thames Water Utilities Ltd) v Bromley Magistrates' Court* [2008] EWHC 1763 (Admin), [2009] 1 All ER 744, [2009] 1 WLR 1247. Lubricating oil may cease to be considered as waste for the purpose of European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) (which replaces EEC Council Directive 75/442) once it is collected and processed into fuel oil in preparation for burning: *R (on the application of OSS Group Ltd) v Environment Agency* [2007] EWCA Civ 611, [2007] 3 CMLR 798. Electrical appliances awaiting repair, having been exchanged by consumers, were not considered 'waste' within the meaning of the Environmental Protection Act 1990 s 33 and s 75 and EEC Council Directive 75/442 (now replaced by European Parliament and EC Council Directive 2006/12): *Environment Agency v Thorn International UK Ltd* [2008] EWHC 2595 (Admin), [2009] PTSR 906, [2008] All ER (D) 28 (Jul). See also *Environment Agency v Inglenorth Ltd* [2009] EWHC 670 (Admin), [2009] LLR 389, [2009] All ER (D) 167 (Mar); and PARA 624 note 2.

- 6 Environmental Protection Act 1990 Sch 2B para 1 (as added: see note 3).
- 7 Environmental Protection Act 1990 Sch 2B para 2 (as added: see note 3).
- 8 Environmental Protection Act 1990 Sch 2B para 3 (as added: see note 3).
- 9 Environmental Protection Act 1990 Sch 2B para 4 (as added: see note 3).
- 10 Environmental Protection Act 1990 Sch 2B para 5 (as added: see note 3).
- 11 Environmental Protection Act 1990 Sch 2B para 6 (as added: see note 3).
- 12 Environmental Protection Act 1990 Sch 2B para 7 (as added: see note 3).
- 13 Environmental Protection Act 1990 Sch 2B para 8 (as added: see note 3).
- 14 Environmental Protection Act 1990 Sch 2B para 9 (as added: see note 3).
- 15 Environmental Protection Act 1990 Sch 2B para 10 (as added: see note 3).
- 16 Environmental Protection Act 1990 Sch 2B para 11 (as added: see note 3).
- 17 Environmental Protection Act 1990 Sch 2B para 12 (as added: see note 3).
- 18 Environmental Protection Act 1990 Sch 2B para 13 (as added: see note 3).
- 19 Environmental Protection Act 1990 Sch 2B para 14 (as added: see note 3).
- 20 Environmental Protection Act 1990 Sch 2B para 15 (as added: see note 3).
- 21 Environmental Protection Act 1990 Sch 2B para 16 (as added: see note 3).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(1) INTRODUCTION/624. Meanings of 'controlled waste', 'household waste', 'industrial waste', 'commercial waste' and 'hazardous waste'.

624. Meanings of 'controlled waste', 'household waste', 'industrial waste', 'commercial waste' and 'hazardous waste'.

For the purposes of Part II of the Environmental Protection Act 1990¹, 'controlled waste' means household, industrial and commercial waste, or any such waste².

'Household waste' means waste from:

- 1524 (1) domestic property, that is to say, a building or self-contained part of a building which is used wholly for the purposes of living accommodation³;
- 1525 (2) a caravan⁴ which usually and for the time being is situated on a caravan site⁵;
- 1526 (3) a residential home⁶;
- 1527 (4) premises forming part of a university or school or other educational establishment⁷;
- 1528 (5) premises forming part of a hospital or nursing home⁸.

'Industrial waste' means waste from any of the following premises:

- 1529 (a) any factory⁹;
- 1530 (b) any premises used for the purposes of, or in connection with, the provision to the public of transport services by land, water or air¹⁰;
- 1531 (c) any premises used for the purposes of, or in connection with, the supply to the public of gas, water or electricity or the provision of sewerage services¹¹;
- 1532 (d) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services¹²; or
- 1533 (e) any mine or quarry or any premises used for agriculture¹³.

'Commercial waste' means waste from premises used wholly or mainly for the purposes of a trade or business or the purposes of sport, recreation or entertainment¹⁴ excluding:

- 1534 (i) household waste¹⁵;
- 1535 (ii) industrial waste¹⁶; and
- 1536 (iii) waste of any other description prescribed by regulations made by the Secretary of State for these purposes¹⁷.

'Hazardous waste' means any waste which is hazardous waste for the purposes of the relevant regulations¹⁸.

Regulations made by the Secretary of State may provide that waste of a description prescribed in the regulations is to be treated¹⁹ as being or not being household waste or industrial waste or commercial waste²⁰.

¹ ie the Environmental Protection Act 1990 Pt II (ss 29-78).

2 Environmental Protection Act 1990 s 75(4). Certain categories of litter and refuse are also included: see s 96; the Controlled Waste Regulations 1992, SI 1992/588; and PARA 732. See also Department of the Environment Circular 14/92 *The Environmental Protection Act 1990 - Parts II and IV, the Controlled Waste Regulations 1992*. As to the meaning of 'waste' see PARA 623. As to controlled waste under the Control of Pollution Act 1974 see *Thanet District Council v Kent County Council* [1993] Env LR 391. See also *A-G's Reference (No 5 of 2000)* [2001] EWCA Crim 1077, [2001] 2 CMLR 1025, [2001] All ER (D) 71 (May); and PARA 623 note 5. As to where material moved from one site to another for a customer was not considered controlled waste because at the time it was delivered the customer intended to use it immediately for another purpose see *Environment Agency v Inglenorth Ltd* [2009] EWHC 670 (Admin), [2009] LLR 389, [2009] All ER (D) 167 (Mar).

3 Environmental Protection Act 1990 s 75(5)(a).

4 Ie a caravan as defined in the Caravan Sites and Control of Development Act 1960 s 29(1): see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1033.

5 Environmental Protection Act 1990 s 75(5)(b). This provision refers to a caravan site within the meaning of the Caravan Sites and Control of Development Act 1960: see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1032.

6 Environmental Protection Act 1990 s 75(5)(c).

7 Environmental Protection Act 1990 s 75(5)(d).

8 Environmental Protection Act 1990 s 75(5)(e).

9 Environmental Protection Act 1990 s 75(6)(a). This provision refers to a factory within the meaning of the Factories Act 1961: see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 318.

10 Environmental Protection Act 1990 s 75(6)(b).

11 Environmental Protection Act 1990 s 75(6)(c).

12 Environmental Protection Act 1990 s 75(6)(d).

13 Environmental Protection Act 1990 s 75(6)(e) (added by SI 2006/937). As to the meanings of 'mine' and 'quarry' see **MINES, MINERALS AND QUARRIES** (2003 Reissue) PARAS 5, 6. The reference to agriculture is a reference to agriculture within the meaning of the Agriculture Act 1947: see **AGRICULTURAL LAND** vol 1 (2008) PARA 324.

14 Environmental Protection Act 1990 s 75(7).

15 Environmental Protection Act 1990 s 75(7)(a).

16 Environmental Protection Act 1990 s 75(7)(b).

17 Environmental Protection Act 1990 s 75(7)(d). As to the regulations made see the Controlled Waste Regulations 1992, SI 1992/588; and note 2. See also Department of the Environment Circular 14/92 *The Environmental Protection Act 1990 - Parts II and IV, the Controlled Waste Regulations 1992*. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

18 Environmental Protection Act 1990 s 75(8A)(a), (b) (s 75(8A), (8B) added by SI 2005/894; and the Environmental Protection Act 1990 s 75(8B) repealed, and s 75(8A)(b) substituted, in relation to Wales by SI 2005/1806). In relation to England the relevant regulations are the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894 (amended by SI 2006/937; SI 2007/3476; SI 2007/3538; and SI 2009/507), and in relation to Wales the relevant regulations are the Hazardous Waste (Wales) Regulations 2005, SI 2005/1806 (amended by SI 2006/937; SI 2007/3538; and SI 2009/2861): see the Environmental Protection Act 1990 s 75(8A)(a) (as so added); s 75(8A)(b) (as so added and substituted). See PARA 705. See also *Castle Cement v Environment Agency* [2001] EWHC Admin 224, [2001] 2 CMLR 393; and PARA 623 note 5. As to hazardous waste, including lists of waste displaying hazardous properties under the Environmental Protection Act 1990 s 62A, see PARA 705.

19 Ie for the purposes of the provisions of the Environmental Protection Act 1990 Pt II prescribed in the regulations.

20 Environmental Protection Act 1990 s 75(8). References to waste in s 75(7), (8) do not include sewage (including matter in or from a privy) except so far as the regulations provide otherwise: s 75(8). Certain

functions under s 75 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. As to the regulations made see the Controlled Waste Regulations 1992, SI 1992/588 (see note 2); the Waste Management Licensing Regulations 1994, SI 1994/1056, but these for the most part have been replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 662 et seq); the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894 (see note 18); the Hazardous Waste (Wales) Regulations 2005, SI 2005/1806 (see note 18); and the Waste Management (England and Wales) Regulations 2006, SI 2006/937.

UPDATE

624 Meanings of 'controlled waste', 'household waste', 'industrial waste', 'commercial waste' and 'hazardous waste'

NOTE 13--See *R v W* [2010] EWCA Crim 927, [2010] All ER (D) 154 (May) (ample evidence that materials were controlled waste).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(1) INTRODUCTION/625. Offences of making false or misleading statements or false entries.

625. Offences of making false or misleading statements or false entries.

A person who, in purported compliance with a requirement¹ to furnish any information, makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, commits an offence².

A person who commits an offence under these provisions is liable to a penalty³.

1 le imposed by or under any provision of the Environmental Protection Act 1990 Pt II (ss 29-78).

2 Environmental Protection Act 1990 s 44(1) (s 44 substituted by the Environment Act 1995 Sch 19 para 4(1); and amended by SI 2007/3538).

3 Environmental Protection Act 1990 s 44(3) (as substituted: see note 2). The penalty on summary conviction is a fine not exceeding the statutory maximum (see s 44(3)(a) (as so substituted)); and on conviction on indictment is a fine or imprisonment for a term not exceeding two years, or both (see s 44(3)(b) (as so substituted)). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(1) INTRODUCTION/626. Obtaining of information from persons and authorities.

626. Obtaining of information from persons and authorities.

For the purpose of the discharge of their respective functions under Part II of the Environmental Protection Act 1990¹:

- 1537 (1) the Secretary of State²; and
- 1538 (2) a waste regulation authority³,

may, by notice in writing served on him⁴, require any person to furnish such information specified in the notice as the Secretary of State or the authority, as the case may be, reasonably considers he or it needs, in such form and within such period following service of the notice, or at such time, as is so specified⁵.

The Secretary of State may, by notice in writing, require a waste regulation authority or waste collection authority⁶ to supply to him, or to such other person as may be specified in the notice, such information as may be so specified in respect of: (a) cases where the authority has exercised any powers to require removal of waste unlawfully deposited⁷; and (b) cases where the authority has taken action under any other enactment in respect of any deposit or other disposal⁸ of controlled waste⁹ in contravention of the relevant prohibition¹⁰.

1 le the Environmental Protection Act 1990 Pt II (ss 29-78).

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the meaning of 'waste regulation authority' see PARA 620 note 6.

4 As to service of notices see the Environmental Protection Act 1990 s 160; and PARA 147.

5 Environmental Protection Act 1990 s 71(2) (amended by the Environment Act 1995 Sch 22 para 86). Certain functions under s 71 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. The Environmental Protection Act 1990 s 71 may require a person to provide information which leads to self-incrimination, notwithstanding the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 6: see *R v Hertfordshire County Council, ex p Green Environmental Industries Ltd* [2000] 2 AC 412, [2000] 1 All ER 773, HL. See also *Environment Agency v Steve Parr Haulage and Plant Hire Ltd* [1999] All ER (D) 1055.

As from a day to be appointed, a waste collection authority has the power referred to in the Environmental Protection Act 1990 s 71(2) for the purpose of the discharge of its functions under ss 34B, 34C (see PARA 659): s 71(2A) (prospectively added by the Clean Neighbourhoods and Environment Act 2005 s 46(2)(a)). At the date at which this volume states the law no such day had been appointed in relation to England; in relation to Wales, the appointed day for certain purposes is 16 March 2006: see the Clean Neighbourhoods and Environment Act 2005 (Commencement No 1 and Savings) (Wales) Order 2006, SI 2006/768, art 3.

A person who fails, without reasonable excuse, to comply with a requirement imposed under the Environmental Protection Act 1990 s 71(2) or s 71(2A) is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both: s 71(3) (amended by the Environment Act 1995 Sch 19 para 4(2), Sch 24; and the Clean Neighbourhoods and Environment Act 2005 s 46(2)(b)). At the date at which this volume states the law the amendment by the Clean Neighbourhoods and Environment Act 2005 is in force in relation to England; in relation to Wales, the appointed day for certain purposes is 16 March 2006: see the Clean Neighbourhoods and Environment Act 2005 (Commencement No 1 and Savings) (Wales) Order 2006, SI 2006/768, art 3. As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

6 As to the meaning of 'waste collection authority' see PARA 620 note 8.

7 Environmental Protection Act 1990 s 71(4)(a) (s 71(4) added by the Anti-social Behaviour Act 2003 s 55(5)). The powers referred to in the text are those under the Environmental Protection Act 1990 s 59: see PARA 702.

8 As to the meaning of 'disposal' see PARA 620 note 12.

9 As to the meaning of 'controlled waste' see PARA 624.

10 Environmental Protection Act 1990 s 71(4)(b) (as added: see note 7). As to the prohibition referred to in the text see s 33(1); and PARA 655.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(2) POWERS AND DUTIES/(i) Waste Strategy/627. National waste strategy.

(2) POWERS AND DUTIES

(i) Waste Strategy

627. National waste strategy.

The Secretary of State¹ must as soon as possible prepare a statement (the 'strategy') containing his policies in relation to the recovery and disposal of waste². The Secretary of State may from time to time modify the strategy³.

In preparing the strategy or any modification of it, the Secretary of State must consult: (1) the Environment Agency⁴; and (2) such bodies or persons appearing to him to be representative of the interests of local government, and such bodies or persons appearing to him to be representative of the interests of industry, as he may consider appropriate⁵. He may consult such other bodies or persons as he considers appropriate⁶.

The Secretary of State may give directions to the Environment Agency requiring it to advise him on the policies which are to be included in the strategy⁷. The Secretary of State may also give directions to the Environment Agency requiring it to carry out a survey of or investigation into:

- 1539 (a) the likely kinds or quantities of waste⁸;
- 1540 (b) the facilities which are or appear to the Environment Agency likely to be available or needed for recovering or disposing of any such waste⁹;
- 1541 (c) any other matter upon which the Secretary of State wishes to be informed in connection with his preparation of the strategy or any modification of it¹⁰,

and to report its findings to him¹¹.

The Waste and Emissions Trading Act 2003 introduces provisions for municipal waste management strategies¹².

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Environmental Protection Act 1990 s 44A(1) (s 44A added by the Environment Act 1995 s 92(1)). For these purposes, 'strategy' includes the strategy as modified from time to time; and 'statement' must be construed accordingly: Environmental Protection Act 1990 s 44A(9) (as so added). As to the meaning of 'waste' see PARA 623. As to the meaning of 'disposal' see PARA 620 note 12. Section 44A makes provision for the purpose of implementing EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) on waste (see PARAS 33, 623): Environmental Protection Act 1990 s 44A(10) (as so added).

The strategy may consist of one or more statements which between them relate to the whole country: see s 44A(2) (as so added). Without prejudice to the generality of what may be included in the strategy, the strategy must include:

- 30 (1) a statement of the Secretary of State's policies for attaining the objectives specified in Sch 2A (s 44A(4)(a) (as so added));
- 31 (2) provisions relating to each of the following, that is to say: (a) the type, quantity and origin of waste to be recovered or disposed of; (b) general technical requirements; and (c) any special requirements for particular wastes (s 44A(4)(b) (as so added)).

The objectives are as follows:

- 32 (i) ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and, in particular, without: (A) risk to water, air, soil, plants or animals; (B) causing nuisance through noise or odours; or (C) adversely affecting the countryside or places of special interest (Sch 2A para 1 (Sch 2A added by the Environment Act 1995 Sch 12));
- 33 (ii) establishing an integrated and adequate network of waste disposal installations, taking account of the best available technology not involving excessive costs (Environmental Protection Act 1990 Sch 2A para 2 (as so added));
- 34 (iii) ensuring that the network referred to in head (ii) above enables: (A) the European Union as a whole to become self-sufficient in waste disposal, and the member states individually to move towards that aim, taking into account geographical circumstances or the need for specialised installations for certain types of waste; and (B) waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health (Sch 2A para 3 (as so added));
- 35 (iv) encouraging the prevention or reduction of waste production and its harmfulness, in particular by: (A) the development of clean technologies more sparing in their use of natural resources; (B) the technical development and marketing of products designed so as to make no contribution or to make the smallest possible contribution, by the nature of their manufacture, use or final disposal, to increasing the amount or harmfulness of waste and pollution hazards; and (C) the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery (Sch 2A para 4 (as so added));
- 36 (v) encouraging: (A) the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials; and (B) the use of waste as a source of energy (Sch 2A para 5 (as so added)).

The 'environment' consists of all, or any, of the following media, namely land, water and the air: s 29(1), (2). As to the meaning of 'recycle' see PARA 620 note 12.

As to the practical implementation of the national waste strategy and the weight to be attached to its objectives see *R v Leicestershire County Council, ex p Blackfordby and Boothorpe Action Group* [2000] Env LR 2; *R v Environment Agency, ex p Levy* [2002] EWHC 1663 (Admin), [2003] Env LR 11; *R (on the application of Blewett) v Derbyshire County Council* [2003] EWHC 2775 (Admin), [2004] JPL 751, [2004] Env LR 29 (affd sub nom *Derbyshire Waste Ltd v Blewett* [2004] EWCA Civ 1508, [2005] JPL 620, [2005] Env LR 15).

3 Environmental Protection Act 1990 s 44A(3) (as added: see note 2). See eg Department for Environment, Food and Rural Affairs *Waste Strategy for England 2007* (WS2007); which, at the date at which this volume states the law, was available at www.defra.gov.uk.

4 Environmental Protection Act 1990 s 44A(5)(a) (as added: see note 2). As to the Environment Agency see PARA 68 et seq.

5 Environmental Protection Act 1990 s 44A(5)(b) (as added: see note 2).

6 Environmental Protection Act 1990 s 44A(5)(c) (as added: see note 2).

7 Environmental Protection Act 1990 s 44A(6)(a) (as added: see note 2). See also note 11. As to the giving of directions see s 161(5), (6); and PARA 61.

8 See the Environmental Protection Act 1990 s 44A(6)(b)(i) (as added: see note 2). See also note 11.

9 See the Environmental Protection Act 1990 s 44A(6)(b)(ii) (as added: see note 2). See also note 11.

10 See the Environmental Protection Act 1990 s 44A(6)(b)(iii) (as added: see note 2). See also note 11.

11 Environmental Protection Act 1990 s 44A(6)(b) (as added: see note 2). Section 44A(6) is without prejudice to any power to give directions conferred by the Environment Act 1995 s 40 (see PARA 74): see the Environmental Protection Act 1990 s 44A(6) (as so added). A direction under s 44A(6)(b) must specify or describe the matters or the areas which are to be the subject of the survey or investigation, and may make provision in relation to the manner in which: (1) the survey or investigation is to be carried out; or (2) the findings are to be reported or made available to other persons: s 44A(7) (as so added). Where a direction is given under s 44A(6)(b), the Environment Agency must, in accordance with any requirement of the direction:

(a) before carrying out the survey or investigation, consult: (i) such bodies or persons appearing to it to be representative of local planning authorities; and (ii) such bodies or persons appearing to it to be representative of the interests of industry, as it may consider appropriate; and (b) make its findings available to those authorities: s 44A(8) (as so added). 'Local planning authority' has the same meaning as in the Town and Country Planning Act 1990 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq): Environmental Protection Act 1990 s 44A(9) (as so added).

The Environment Agency must publicise any direction given to it under the Environmental Protection Act 1990 s 44A(6) in such manner as it considers appropriate: s 44A(8A) (added by SI 2007/3538).

12 See the Waste and Emissions Trading Act 2003 Pt 1 Ch 2 (ss 29, 30), Pt 1 Ch 3 (ss 31-34); and PARAS 628-629. As to strategies for reducing biodegradable municipal waste for landfill see Pt 1 Ch 1 (ss 1-28); and PARAS 631-643.

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628. Joint municipal waste management strategies in England.

The waste authorities¹ for a two-tier area must: (1) have for the area a joint strategy for the management of waste² from households and other waste that, because of its nature or composition, is similar to waste from households³; (2) keep under review the policies formulated by them for the purposes of their strategy⁴; (3) before formulating policy for the purposes of their strategy, carry out such consultation as they consider appropriate⁵; and (4) set out in a statement any policy formulated by them for the purposes of their strategy⁶. The waste authorities for a two-tier area in Greater London must, when formulating policy for their strategy, have regard to the Mayor of London's municipal waste management strategy⁷ or, where that strategy has been revised, to that strategy as revised⁸.

The Secretary of State may by regulations⁹ make provision for a duty of the waste authorities for a two-tier area¹⁰: (a) not to apply to a waste authority if conditions specified in the regulations are met¹¹; (b) not to apply to a waste authority if, on an application made in accordance with the regulations, the Secretary of State is satisfied that conditions specified in the regulations are met¹²; (c) not to apply to the waste authorities for a two-tier area if, by reason of provision under heads (a) and (b) above, it applies to one or more, but not all, of them¹³; (d) not to apply to the waste authorities for a two-tier area if, on an application made in accordance with the regulations, the Secretary of State is satisfied that conditions specified in the regulations are met¹⁴.

1 The 'waste authorities' for a two-tier area are: (1) the waste disposal authority for the area; and (2) the waste collection authorities within the area: Waste and Emissions Trading Act 2003 s 34(b). A 'two-tier area' is the area of a waste disposal authority in England which is not also a waste collection authority: s 34(a). 'Waste disposal authority' and 'waste collection authority' have the same meanings as in the Environmental Protection Act 1990 Pt 2 (ss 29-78) (see PARA 620 notes 7, 8): Waste and Emissions Trading Act 2003 s 34(c).

2 'Waste' means anything that: (1) is waste for the purposes of EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) on waste (see PARAS 33, 623); and (2) is not excluded from the scope of that Directive by art 2: Waste and Emissions Trading Act 2003 s 37.

3 Waste and Emissions Trading Act 2003 s 32(1). When formulating policy for the purposes of s 32(1), the waste authorities must have regard to any guidance given by the Secretary of State: s 32(5)(a).

The duty applies at all times after the end of the period of 18 months beginning with the day on which the Waste and Emissions Trading Act 2003 is passed (see s 32(1)), although the Secretary of State may by regulations substitute a longer period in relation to a two-tier area specified or described in the regulations (see s 32(10)). The Waste and Emissions Trading Act 2003 received Royal Assent on 13 November 2003. A statutory instrument that contains regulations under s 32(10) is subject to annulment in pursuance of a resolution of either House of Parliament: s 32(11). Any power to make regulations under Pt 1 (ss 1-37) is exercisable by statutory instrument: s 36(3). Any such power includes the power to make different provision for different cases, and power to make incidental, supplementary, consequential or transitional provision or savings: s 36(1). At the date at which this volume states the law, no regulations had been made under s 32(10). As to the Secretary of State see PARA 58.

Where s 32(1) is satisfied in relation to a two-tier area by policies set out in a statement prepared before that provision comes into force, it does not matter that the policies were not formulated for the purposes of s 32(1), but s 32(2) applies as though the policies were formulated for the purposes of s 32(1): s 32(8).

4 Waste and Emissions Trading Act 2003 s 32(2).

5 Waste and Emissions Trading Act 2003 s 32(3). This requirement may be satisfied by consultation before, as well as by consultation after, s 32(3) comes into force: s 32(9).

6 Waste and Emissions Trading Act 2003 s 32(4). When preparing the statement under s 32(4), the waste authorities must have regard to any guidance given by the Secretary of State: s 32(5)(b). Where the waste authorities prepare such a statement: (1) they must take such steps as in their opinion will give adequate publicity in the area to the statement; (2) they must send a copy of the statement: (a) to each of the Secretary of State and the Environment Agency; and (b) if the area is in Greater London, to the Mayor of London; (3) each of the authorities must keep a copy of the statement available at all reasonable times at one of its offices for inspection by the public free of charge; and (4) each of the authorities must supply a copy of the statement to any person who requests one, on payment by the person of such reasonable charge as the authority requires: s 32(7). As to the Environment Agency see PARA 68 et seq. As to the Mayor of London see PARA 100; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 44 et seq.

7 As to the Mayor of London's municipal waste management strategy see PARA 630; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 182.

8 Waste and Emissions Trading Act 2003 s 32(6).

9 Regulations under the Waste and Emissions Trading Act 2003 s 33(1) (see the text and notes 10-14) may include: (1) provision about the duration of any disapplication under s 33(1) of a duty; (2) provision postponing the application of a duty on the coming to an end of a disapplication under s 33(1) of the duty; (3) provision modifying the application of s 32(1)-(7) (see the text and notes 1-8) in relation to a two-tier area where a duty under those provisions applies to one or more, but not all, of the waste authorities for the area: s 33(5). A statutory instrument that contains regulations under s 33 is subject to annulment in pursuance of a resolution of either House of Parliament: s 33(6).

As to the regulations made see the Joint Municipal Waste Management Strategies (Disapplication of Duties) (England) Regulations 2007, SI 2007/63.

10 Is a duty under the Waste and Emissions Trading Act 2003 s 32(1)-(7): see the text and notes 1-8.

11 Waste and Emissions Trading Act 2003 s 33(1)(a). Subject to s 33(2), the conditions that may be specified under s 33(1)(a) include, in particular, conditions that may be met only in the case of authorities that from time to time are, by reason of provision made by or under an enactment, of a particular category: s 33(4). The power under s 33(1)(a) or s 33(1)(b) (see the text and note 12) must be exercised so that provision under s 33(1)(a) or s 33(1)(b) will cause a duty under s 32(1)-(7) not to apply to a waste authority only if: (1) the standard of the authority's performance in carrying out its functions has been at, or above, a particular level; and (2) that level is: (a) the level that, in the Secretary of State's opinion, counts as satisfactory performance; or (b) a level that, in his opinion, is higher than that level: s 33(2). A reference in head (1) above to functions of an authority is a reference to functions of the authority in any capacity, and not only to its functions in its capacity as a waste disposal authority or waste collection authority: s 33(7).

12 Waste and Emissions Trading Act 2003 s 33(1)(b). See also note 11.

13 Waste and Emissions Trading Act 2003 s 33(1)(c).

14 Waste and Emissions Trading Act 2003 s 33(1)(d). The power under s 33(1)(d) must be exercised so that provision under s 33(1)(d) will cause a duty under s 32(1)-(7) not to apply to the waste authorities for a two-tier area only if: (1) as respects at least one of the authorities, the standard of its performance in carrying out its functions has been at, or above, a particular level; or (2) as respects at least two of the authorities, each has so carried out its functions that the overall standard of performance in carrying out those functions has been at, or above, a particular level and, in either case, that level is one mentioned in s 33(2)(b) (see note 11 head (2)(b)): s 33(3). A reference in head (1) or head (2) above to functions of an authority is a reference to functions of the authority in any capacity, and not only to its functions in its capacity as a waste disposal authority or waste collection authority: s 33(7).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(2) POWERS AND DUTIES/(i) Waste Strategy/629. Municipal waste management strategies in Wales.

629. Municipal waste management strategies in Wales.

The Welsh Ministers¹ may by regulations² make provision for requiring a local authority³ to have for its area a strategy for the management of waste⁴. Any such regulations may, in particular: (1) specify matters to be addressed by a strategy⁵; (2) specify wastes to which a strategy is to relate⁶; (3) make provision about policies to be included in a strategy⁷; (4) make provision in connection with review or revision of a strategy⁸; (5) make provision for consultation, or about other procedural matters, in connection with the formulation of policy for the purposes of a strategy⁹; (6) make provision for requiring the preparation of statements setting out policies formulated for the purposes of a strategy¹⁰; (7) make provision about the contents of such statements¹¹; (8) make provision about the form of such statements¹²; (9) make provision for publicising such statements once prepared, for publishing them, for sending copies of them to persons specified in the regulations and for public inspection of them¹³; (10) make provision for the supply of copies of such statements, including provision for the payment of reasonable charges¹⁴; (11) make provision for requiring a local authority, when formulating policy for the purposes of a strategy or preparing such a statement, to have regard to guidance, including future guidance¹⁵; (12) make provision about when duties imposed by the regulations are to be performed, including provision for duties to be performed by times specified in directions given by the Welsh Ministers¹⁶.

The Welsh Ministers may by regulations make provision requiring a local authority¹⁷ to provide them with information: (a) of a description specified by the regulations¹⁸; and (b) relating to, or to a description of, waste that is or has been in, or may or will come into, the authority's area¹⁹. Any such regulations may make provision: (i) in connection with the collection, verification or certification of information whose provision is required by such regulations²⁰; (ii) about the form in which, and the means by which, information is to be provided²¹; (iii) about when duties imposed by the regulations are to be performed, including provision for duties to be performed by times specified in directions given by the Assembly²².

1 As to the Welsh Ministers see PARA 59.

2 As to the power to make regulations see PARA 628 note 3.

3 For these purposes, 'local authority' means a county council, or county borough council, in Wales: Waste and Emissions Trading Act 2003 s 29(3).

4 See the Waste and Emissions Trading Act 2003 s 29(1). As to the meaning of 'waste' see PARA 628 note 2.

5 Waste and Emissions Trading Act 2003 s 29(2)(a).

6 Waste and Emissions Trading Act 2003 s 29(2)(b).

7 Waste and Emissions Trading Act 2003 s 29(2)(c).

8 Waste and Emissions Trading Act 2003 s 29(2)(d).

9 Waste and Emissions Trading Act 2003 s 29(2)(e).

10 Waste and Emissions Trading Act 2003 s 29(2)(f).

11 Waste and Emissions Trading Act 2003 s 29(2)(g).

- 12 Waste and Emissions Trading Act 2003 s 29(2)(h).
- 13 Waste and Emissions Trading Act 2003 s 29(2)(i).
- 14 Waste and Emissions Trading Act 2003 s 29(2)(j).
- 15 Waste and Emissions Trading Act 2003 s 29(2)(k).
- 16 Waste and Emissions Trading Act 2003 s 29(2)(l).
- 17 For these purposes, 'local authority' means a county council, or county borough council, in Wales: Waste and Emissions Trading Act 2003 s 30(3).
- 18 Waste and Emissions Trading Act 2003 s 30(1)(a).
- 19 Waste and Emissions Trading Act 2003 s 30(1)(b).
- 20 Waste and Emissions Trading Act 2003 s 30(2)(a).
- 21 Waste and Emissions Trading Act 2003 s 30(2)(b).
- 22 See the Waste and Emissions Trading Act 2003 s 30(2)(c).

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630. London.

Under Part IX of the Greater London Authority Act 1999¹, the Mayor of London² must produce and publish a municipal waste management strategy³. The Secretary of State⁴ may give directions to the Mayor about the municipal waste management strategy where it might be detrimental to any area outside Greater London, or if such a direction is necessary for the implementation of a national waste strategy or landfill strategy for England⁵. Waste authorities⁶ must act in general conformity with the strategy in exercising their functions⁷, and the Mayor may give directions to such authorities in certain circumstances⁸. Waste authorities must furnish certain information about waste contracts⁹ to the Mayor, subject to restrictions as to confidential information¹⁰.

1 le the Greater London Authority Act 1999 Pt IX (ss 351-374). As to duties in regard to climate change, energy, etc see ss 361A-361E; and **LONDON GOVERNMENT**.

2 As to the Mayor of London see PARA 100; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 44 et seq.

See the Greater London Authority Act 1999 s 353; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 182-183. 'Municipal waste' means any waste in the possession or under the control of:

37 (1) a body which, or a person who, is a waste collection authority in Greater London; or

38 (2) a body which is a waste disposal authority in Greater London,

whether or not the waste is in the possession or under the control of the body or person under or by virtue of the Environmental Protection Act 1990: Greater London Authority Act 1999 s 360(1), (2). As to the meaning of 'waste' see PARA 623; definition applied by s 360(1), (2). 'Waste collection authority in Greater London' is to be construed in accordance with the Environmental Protection Act 1990 s 30(3)(b) (see PARA 620); and 'waste disposal authority in Greater London' is to be construed in accordance with s 30(2)(b) (see PARA 620): see the Greater London Authority Act 1999 s 360(1), (2).

As to the implementation of the London waste strategy see *R (on the application of Western Riverside Waste Authority) v Wandsworth Borough Council* [2005] EWHC 536 (Admin), [2006] JPL 270, [2005] Env LR 41.

4 As to the Secretary of State see PARA 58.

5 See the Greater London Authority Act 1999 s 354; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 182-183.

6 'Waste authority' means a waste collection authority in Greater London or a waste disposal authority in Greater London: Greater London Authority Act 1999 s 360(1), (2).

7 See the Greater London Authority Act 1999 s 355; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 183. As to the London Waste and Recycling Board see ss 356A, 356B; and **LONDON GOVERNMENT**.

8 See the Greater London Authority Act 1999 s 356; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 183. Until the date of first publication of the municipal waste management strategy, ss 356(1), 357(5), 358(3) have effect as if the references to the municipal waste management strategy were references to the policies contained in the strategy prepared by the Secretary of State in accordance with the Environmental Protection Act 1990 s 44A (see PARA 627): see the Greater London Authority Act 1999 s 360(5); and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 184.

9 'Waste contract' means a contract which includes or is to include provision relating to municipal waste and is made or to be made by a waste authority in the performance of its functions under the Environmental Protection Act 1990 Pt II (ss 29-78): Greater London Authority Act 1999 s 360(1), (2).

10 See the Greater London Authority Act 1999 ss 357-359; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 184. See also note 8.

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(ii) Reducing Biodegradable Municipal Waste for Landfill

631. Landfill targets.

'Landfill' is a site for the deposit of waste¹ onto or into land where the site is a waste disposal site², or used for the storage of waste³. In determining whether a site is a landfill, the following activities at the site are to be ignored: (1) the temporary storage of waste if the site is used for such storage for less than one year⁴; (2) the unloading of waste in order to permit the waste to be prepared for further transport for recovery, treatment⁵ or disposal elsewhere⁶; (3) the storage of waste, prior to recovery or treatment, for a period of less than three years as a general rule⁷; (4) the storage of waste, prior to disposal, for a period of less than one year⁸. The fact that a site for the deposit of waste is at the place of production of the waste does not prevent the site from being a landfill⁹.

As from a date to be appointed, the Secretary of State: (a) must by regulations¹⁰ specify the maximum amount¹¹ by weight of biodegradable municipal waste¹² allowed, in each scheme year¹³ that is a target year¹⁴, to be sent to landfills¹⁵; and (b) may by regulations specify the maximum amount by weight of biodegradable municipal waste allowed, in a scheme year that is not a target year, to be sent to landfills¹⁶.

If the Secretary of State does not exercise his discretion to specify any amount¹⁷, and the year is followed, whether or not immediately, by a target year, the year is a default-rule year, and the maximum amount of biodegradable municipal waste allowed is the amount given by a specified formula¹⁸.

1 As to the meaning of 'waste' see PARA 628 note 2.

2 Waste and Emissions Trading Act 2003 s 22(1)(a).

3 Waste and Emissions Trading Act 2003 s 22(1)(b).

4 Waste and Emissions Trading Act 2003 s 22(2)(a).

5 'Treatment' means the physical, thermal, chemical or biological processes, including sorting, that change the characteristics of waste in order to reduce its volume, reduce its hazardous nature, facilitate its handling, or enhance its recoverability: Waste and Emissions Trading Act 2003 s 22(4).

6 Waste and Emissions Trading Act 2003 s 22(2)(b).

7 Waste and Emissions Trading Act 2003 s 22(2)(c).

8 Waste and Emissions Trading Act 2003 s 22(2)(d).

9 Waste and Emissions Trading Act 2003 s 22(3).

10 Any power to make regulations under the Waste and Emissions Trading Act 2003 Pt 1 (ss 1-37) is exercisable by statutory instrument: s 36(3). Any such power includes the power to make different provision for different cases, and power to make incidental, supplementary, consequential or transitional provision or savings: s 36(1).

A statutory instrument that contains regulations under Pt 1 Ch 1 (ss 1-28) made by the Secretary of State, and is not subject to any requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament, is subject to annulment in pursuance of a resolution of either House of Parliament: s

28(1). No affirmative-procedure regulations may be made by the Secretary of State unless a draft of the statutory instrument containing the regulations, whether containing them alone or with other provisions, has been laid before, and approved by a resolution of, each House of Parliament: s 28(2). 'Affirmative-procedure regulations' means regulations under s 1 or 2 (see the text and notes 10-16), and the first regulations to be made under each of s 6 (see PARA 634), s 7 (see PARA 635) and s 11 (see PARA 638) by the Secretary of State: s 28(7). As to the Secretary of State see PARA 58.

11 Amounts specified in relation to the United Kingdom must be consistent with the obligations of the United Kingdom under EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) art 5(2) (see PARA 43): Waste and Emissions Trading Act 2003 s 1(2). As to the meaning of 'United Kingdom' see PARA 1 note 2.

12 'Biodegradable municipal waste' means waste that is both biodegradable waste and municipal waste: Waste and Emissions Trading Act 2003 s 21(2). 'Biodegradable waste' means any waste that is capable of undergoing anaerobic or aerobic decomposition, such as food and garden waste, and paper and paperboard: s 21(1). 'Municipal waste' means waste from households, and other waste that, because of its nature or composition, is similar to waste from households: s 21(3).

13 'Scheme year' means: (1) for England, Scotland and Northern Ireland a year beginning with 1 April in any of 2005-2019; and (2) for Wales, the period of six months beginning with 1 October 2004, or a year beginning with 1 April in any of 2005-2019: Waste and Emissions Trading Act 2003 s 23(1) (amended by SI 2004/1936). The Secretary of State may by regulations amend the Waste and Emissions Trading Act 2003 s 23(1) for the purpose of: (a) providing for a different day to be the first day of a scheme year; (b) adding or omitting one or more scheme years; (c) providing for a scheme year to be a period shorter or longer than a year; (d) changing the target years or any of them; (e) adding or omitting one or more target years: s 23(2). Before making any such regulations, the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for Environment, Food and Rural Affairs: see s 23(3). Power to make regulations under head (a), (b) or (c) above also includes: (i) power to make different provision in relation to England, Scotland, Wales and Northern Ireland respectively; and (ii) power to make consequential provision amending s 3(6) (see note 18): s 36(2). As to the Welsh Ministers see PARA 59. As to the Department for Environment, Food and Rural Affairs see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 452 et seq.

14 'Target year' means a scheme year ending with 31 March in 2010, 2013 or 2020: Waste and Emissions Trading Act 2003 s 23(1) (substituted by SI 2004/1936).

15 Waste and Emissions Trading Act 2003 s 1(1). The Secretary of State must specify maximum allowances from each of the United Kingdom, England, Scotland, Wales and Northern Ireland: s 1(1)(a)-(e). The total of the amounts specified in relation to England, Scotland, Wales and Northern Ireland for a year must not exceed the amount specified in relation to the United Kingdom for that year: s 1(3). The Secretary of State must consult the Welsh Ministers before specifying amounts in relation to Wales: see s 1(4)(b), (5). See the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004, SI 2004/1936, which specify the maximum amounts for scheme years which are target years.

16 Waste and Emissions Trading Act 2003 s 2(1). The power to specify the maximum amount of biodegradable municipal waste allowed to be sent to landfills from Wales is exercisable only with the agreement of the National Assembly for Wales: s 2(3). See the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004, SI 2004/1936, which specify the maximum amounts for the years 2005-2009.

17 le under the Waste and Emissions Trading Act 2003 s 2(1): see the text and note 16.

18 Waste and Emissions Trading Act 2003 s 3(1), (2). As to the specified formula see s 3(3)-(9).

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632. Allocating authorities.

The allocating authority for England is the Secretary of State¹ and, for Wales, is the Welsh Ministers².

1 As to the Secretary of State see PARA 58.

2 See the Waste and Emissions Trading Act 2003 s 24(1). As to the Welsh Ministers see PARA 59.

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633. Landfill allowances scheme.

Each allocating authority¹ must for each scheme year² that is a target year³, and for each other scheme year for which an amount is specified⁴ for its area, make among waste disposal authorities⁵ in its area an allocation of allowances authorising the sending in that year of amounts of biodegradable municipal waste⁶ to landfills⁷. In performing this duty, an allocating authority must ensure that the total amount of biodegradable municipal waste authorised to be sent to landfills by the allowances it allocates for a year does not exceed the amount specified⁸ for the year for its area⁹. As soon as an authority has made any such allocation, it must publish a statement detailing, in relation to each waste disposal authority in its area, what allowances have been allocated to it, and explaining the basis of the allocation¹⁰.

An authority that has made an allocation¹¹ may at any time alter the allocation¹², but it may not withdraw an allowance that has already been utilised¹³. As soon as an authority has altered any allocation, it must publish a statement detailing the alteration, and explaining the basis of it¹⁴.

1 As to the allocating authorities see PARA 632.

2 As to scheme years see PARA 631 note 13.

3 As to target years see PARA 631 note 14.

4 Ie under the Waste and Emissions Trading Act 2003 s 2: see PARA 631.

5 In relation to England, Wales and Scotland, 'waste disposal authority' has the same meaning as in the Environmental Protection Act 1990 Pt 2 (ss 29-78) (see PARA 620 note 7); and in relation to Northern Ireland means a district council: Waste and Emissions Trading Act 2003 s 24(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 209(1)(a)).

However for the purposes of the Waste and Emissions Trading Act 2003 Pt 1 Ch 1 (ss 1-28), a joint waste authority for an area in England that has the function of disposing of biodegradable municipal waste is the waste disposal authority for that area: s 24(6) (s 24(6), (7) added by the Local Government and Public Involvement in Health Act 2007 s 209(1)(b)). In the Waste and Emissions Trading Act 2003 s 24(6) a 'joint waste authority' means an authority established by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (see PARA 621): Waste and Emissions Trading Act 2003 s 24(7) (as so added).

6 As to the meaning of 'biodegradable municipal waste' see PARA 631 note 12.

7 Waste and Emissions Trading Act 2003 s 4(1). Such an allocation must be made before the beginning of the year to which it relates: s 4(3). As to the meaning of 'landfill' see PARA 631.

For the purposes of Pt 1 Ch 1 (ss 1-28), sending biodegradable waste, or biodegradable municipal waste, to landfills does not include: (1) the spreading of sludges, including sewage sludges and sludges resulting from dredging operations, or similar matter, on the soil for the purposes of fertilisation or improvement; (2) the deposit of non-hazardous dredging sludges alongside small waterways from out of which they have been dredged; (3) the deposit of non-hazardous sludges in surface water or in the bed or subsoil of surface water; or (4) the deposit of unpolluted soil resulting from: (a) prospecting for, or the extraction, treatment or storage of, mineral resources; or (b) the operation of quarries: s 25(1). Sludge is 'non-hazardous' if it is not hazardous waste within the meaning of the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, reg 6 (see PARA 624): Waste and Emissions Trading Act 2003 s 25(2) (amended by SI 2005/894; and SI 2005/1806). As to the meaning of 'biodegradable waste' see PARA 631 note 12. As to the meaning of 'waste' see PARA 628 note 2.

8 Ie specified under the Waste and Emissions Trading Act 2003 s 1 or s 2: see PARA 631.

9 Waste and Emissions Trading Act 2003 s 4(2).

10 Waste and Emissions Trading Act 2003 s 4(4). Nothing in s 4 is to be taken as requiring any allowances to be allocated to any particular waste disposal authority: s 4(5).

11 le under the Waste and Emissions Trading Act 2003 s 4: see the text and notes 1-10.

12 Waste and Emissions Trading Act 2003 s 5(1).

13 Waste and Emissions Trading Act 2003 s 5(2). In exercising the power under s 5(1), an authority must ensure that the total amount of biodegradable municipal waste authorised to be sent to landfills by allowances allocated by it for a year does not exceed the amount for the year specified under s 1 or s 2 (see PARA 631) for its area: s 5(3).

14 Waste and Emissions Trading Act 2003 s 5(4).

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634. Use of landfill allowances allocated for a different scheme year.

An allocating authority¹ may by regulations² make provision for a waste disposal authority³ in its area to utilise for a scheme year⁴ landfill allowances⁵ allocated to it for a different scheme year⁶. Any such regulations may not provide for: (1) the utilisation for a target year⁷ of allowances not allocated for that year⁸; (2) the utilisation for a scheme year later than a target year of allowances allocated for a scheme year earlier than that target year⁹; (3) the utilisation for a scheme year earlier than a target year of allowances allocated for a scheme year later than that target year¹⁰.

Such regulations may, in particular: (a) make provision relating only to allowances allocated for specified¹¹ scheme years¹²; (b) make provision for allowances allocated for a scheme year to be utilised for a different scheme year only if: (i) that different scheme year is a specified scheme year; (ii) specified conditions are satisfied¹³; (c) make provision for quantitative limits on inter-year utilisation of allowances¹⁴; (d) make provision authorising the allocating authority to suspend inter-year utilisation of allowances: (i) whether indefinitely or for a fixed period; and (ii) whether generally or to a limited extent¹⁵; (e) make provision for a person to carry out, in relation to inter-year utilisation of allowances, all or any of the functions of registrar and overseer¹⁶; (f) make provision imposing, or enabling the imposition of, requirements on waste disposal authorities to provide information in relation to their inter-year utilisation of allowances¹⁷; (g) make provision for an authority to be liable to a penalty¹⁸ if it fails to comply with a requirement imposed on it by or under provision of the kind mentioned in head (f) above¹⁹; (h) make provision generally in connection with the administration or regulation of inter-year utilisation of allowances²⁰; (i) make provision for the levying of fees and charges on persons engaged in inter-year utilisation of allowances²¹; (j) make provision creating offences for breaches of provisions of any such regulations²².

1 As to allocating authorities see PARA 632.

2 As to the power to make regulations see PARA 631 note 10.

3 As to waste disposal authorities see PARA 620 note 7.

4 As to scheme years see PARA 631 note 13.

5 As to landfill allowances see PARA 633.

6 Waste and Emissions Trading Act 2003 s 6(1). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 5-9. Before making any such regulations under the Waste and Emissions Trading Act 2003 Pt 1 Ch 1 (ss 1-28), other than regulations under s 1, s 2, s 3 or s 23, an allocating authority must: (1) consult such bodies or persons appearing to it to be representative of the interests of waste disposal authorities in its area as it considers appropriate; (2) consult such bodies or persons appearing to it to be representative of the interests of persons concerned in the operation of landfills in its area as it considers appropriate; and (3) consult such bodies or persons appearing to it to be representative of any other affected persons as it considers appropriate: s 27(1), (2). As to the meaning of 'landfill' see PARA 631. 'Affected person' means a person appearing to the allocating authority to be a person who will or may be affected by the regulations: s 27(3). Such consultation may be before, as well as after, the coming into force of s 27: s 27(5). The allocating authority need not consult as mentioned in head (1) or head (2) above if it appears to it that the interests mentioned in those heads will not be affected by the regulations: s 27(4).

7 As to target years see PARA 631 note 14.

8 Waste and Emissions Trading Act 2003 s 6(2)(a).

9 Waste and Emissions Trading Act 2003 s 6(2)(b).

10 Waste and Emissions Trading Act 2003 s 6(2)(c).

11 'Specified' means specified by, or determined in accordance with, regulations under the Waste and Emissions Trading Act 2003 s 6(1) (see the text and note 6): s 6(4).

12 Waste and Emissions Trading Act 2003 s 6(3)(a).

13 Waste and Emissions Trading Act 2003 s 6(3)(b).

14 Waste and Emissions Trading Act 2003 s 6(3)(c).

15 Waste and Emissions Trading Act 2003 s 6(3)(d).

16 Waste and Emissions Trading Act 2003 s 6(3)(e).

17 Waste and Emissions Trading Act 2003 s 6(3)(f).

18 Where a waste disposal authority in an allocating authority's area is liable to a penalty: (1) the amount of the penalty is that specified by, or calculated under, regulations made by the allocating authority under the Waste and Emissions Trading Act 2003 s 26(3); (2) the penalty, and any interest on it, is to be paid to the allocating authority; and (3) the allocating authority may: (a) extend the time for paying the whole or part of the penalty or any interest on it; (b) relieve the waste disposal authority, in whole or in part, from liability to the penalty or any interest on it: s 26(1). Relief under head (3) above may be given: (a) in respect of an amount after, as well as before, it becomes due; (b) in a particular case or in cases of a particular description; (c) unconditionally or subject to conditions: s 26(2). An allocating authority may, as regards penalties to which waste disposal authorities in its area are liable, by regulations: (i) make provision specifying the amounts of penalties or rules for calculating their amounts; (ii) make provision as to when payments in respect of penalties are due; (iii) make provision for interest where payments in respect of penalties are due but unpaid; (iv) make provision for recovering or setting off, and securing, unpaid amounts in respect of penalties or interest: s 26(3). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 20-22 (reg 20 amended by SI 2005/880); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, regs 13-15. An allocating authority is required to carry out certain consultations before making any regulations under the Waste and Emissions Trading Act 2003 s 26: see note 6.

19 Waste and Emissions Trading Act 2003 s 6(3)(g).

20 Waste and Emissions Trading Act 2003 s 6(3)(h).

21 Waste and Emissions Trading Act 2003 s 6(3)(i).

22 Waste and Emissions Trading Act 2003 s 6(3)(j). Where regulations under s 6(1) are making provision of the kind mentioned in s 6(3)(j), or regulations under s 7(1) are making provision of the kind mentioned in s 7(3) (l) (see PARA 635), the regulations may provide for an offence to be triable only summarily, or either summarily or on indictment: s 8(1), (2).

Where the regulations provide for an offence to be triable only summarily, they may provide for the offence to be punishable: (1) by imprisonment for a term not exceeding such period as is stated in the regulations, which may not exceed three months; (2) by a fine: (a) not exceeding such amount as is so stated, which may not exceed level 5 on the standard scale; or (b) not exceeding such level on the standard scale as is so stated; or (3) by both: s 8(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Where the regulations provide for an offence to be triable either summarily or on indictment, they may provide for the offence to be punishable on summary conviction: (i) by imprisonment for a term not exceeding such period as is stated in the regulations, which may not exceed three months; (ii) by a fine not exceeding such amount as is so stated, which may not exceed the statutory maximum, or expressed as a fine not exceeding the statutory maximum; or (iii) by both: s 8(4), (5). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) para 140.

Where the regulations provide for an offence to be triable either summarily or on indictment, they may provide for the offence to be punishable on conviction on indictment: (a) by imprisonment for a term not exceeding such period as is stated in the regulations, which may not exceed two years; (b) by a fine; or (c) by both: s 8(4), (6).

An allocating authority is required to carry out certain consultations before making any regulations under s 6: see note 6.

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635. Trading and other transfer of landfill allowances.

An allocating authority¹ may by regulations² make provision for waste disposal authorities³ in its area to transfer, whether by way of trade or otherwise, landfill allowances⁴ allocated by that or any other allocating authority⁵. Any such regulations may not authorise: (1) the acquisition of landfill allowances by a person who is not a waste disposal authority⁶; (2) the utilisation for a target year⁷ of allowances not allocated for that year⁸; (3) the utilisation for a scheme year⁹ later than a target year of allowances allocated for a scheme year earlier than that target year¹⁰; (4) the utilisation for a scheme year earlier than a target year of allowances allocated for a scheme year later than that target year¹¹.

However, such regulations may, in particular, make provision: (a) for allowances to be acquired, or disposed of, only if: (i) allocated by the allocating authority or by specified¹² allocating authorities; (ii) allocated for specified scheme years; (iii) specified conditions are satisfied¹³; (b) for quantitative limits on the transfer of allowances¹⁴; (c) for controlling prices or values put on allowances for the purpose of transferring them¹⁵; (d) authorising the allocating authority to suspend the transfer of allowances: (i) whether indefinitely or for a fixed period; and (ii) whether generally or to a limited extent¹⁶; (e) for allowances acquired by a waste disposal authority to be utilised by the authority for a scheme year only if allocated for that scheme year or for specified scheme years¹⁷; (f) for licensing and regulating persons engaged as brokers in the transfer of allowances¹⁸; (g) for a person to carry out, in relation to the transfer of allowances, all or any of the functions of registrar, clearing house and overseer¹⁹; (h) imposing, or enabling the imposition of, requirements on waste disposal authorities to provide information in relation to their acquisition and disposal of allowances²⁰; (i) for an authority to be liable to a penalty²¹ if it fails to comply with a requirement imposed on it by or under provision of the kind mentioned in head (h) above²²; (j) generally in connection with the administration or regulation of the trading of allowances²³; (k) for the levying of fees and charges on persons engaged, in any capacity, in the trading of allowances²⁴; (l) creating offences²⁵ for breaches of provisions of any such regulations or of conditions of a broker's licence²⁶.

1 As to allocating authorities see PARA 632.

2 As to the power to make regulations see PARA 631 note 10.

3 As to waste disposal authorities see PARA 620 note 7.

4 As to landfill allowances see PARA 633.

5 Waste and Emissions Trading Act 2003 s 7(1). As to the regulations that have been made see the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 8, 9. An allocating authority is required to carry out certain consultations before making any regulations under the Waste and Emissions Trading Act 2003 s 7: see PARA 634 note 6.

6 Waste and Emissions Trading Act 2003 s 7(2)(a).

7 As to target years see PARA 631 note 14.

8 Waste and Emissions Trading Act 2003 s 7(2)(b).

9 As to scheme years see PARA 631 note 13.

- 10 Waste and Emissions Trading Act 2003 s 7(2)(c).
- 11 Waste and Emissions Trading Act 2003 s 7(2)(d).
- 12 'Specified' means specified by, or determined in accordance with, regulations under the Waste and Emissions Trading Act 2003 s 7(1) (see the text and note 5): s 7(4).
- 13 Waste and Emissions Trading Act 2003 s 7(3)(a).
- 14 Waste and Emissions Trading Act 2003 s 7(3)(b).
- 15 Waste and Emissions Trading Act 2003 s 7(3)(c).
- 16 Waste and Emissions Trading Act 2003 s 7(3)(d).
- 17 Waste and Emissions Trading Act 2003 s 7(3)(e).
- 18 Waste and Emissions Trading Act 2003 s 7(3)(f).
- 19 Waste and Emissions Trading Act 2003 s 7(3)(g).
- 20 Waste and Emissions Trading Act 2003 s 7(3)(h).
- 21 As to the power of an allocating authority to make regulations relating to a waste disposal authority's liability to penalties see PARA 634 note 18.
- 22 Waste and Emissions Trading Act 2003 s 7(3)(i).
- 23 Waste and Emissions Trading Act 2003 s 7(3)(j).
- 24 Waste and Emissions Trading Act 2003 s 7(3)(k).
- 25 As to the maximum penalties see PARA 634 note 22.
- 26 Waste and Emissions Trading Act 2003 s 7(3)(l). An allocating authority is required to carry out certain consultations before making any regulations under s 7: see PARA 634 note 6.

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636. Duty not to exceed allowances.

If the allocating authority¹ for an area has made an allocation² for a scheme year³, each waste disposal authority⁴ in the area owes a duty to the allocating authority to secure that the amount of biodegradable municipal waste⁵ sent to landfills⁶ in that year in pursuance of arrangements made by the waste disposal authority does not exceed the amount authorised by the landfill allowances⁷ available to that authority for the year⁸. A waste disposal authority that fails to comply with such a duty is liable to a penalty⁹.

If a waste disposal authority is liable to such a penalty in respect of a target year¹⁰, and the total amount of biodegradable municipal waste sent in the year to landfills in pursuance of arrangements made by waste disposal authorities in the United Kingdom exceeds the amount specified¹¹ for the year, the authority is also liable to a supplementary penalty¹². If a waste disposal authority is liable to a penalty in respect of a scheme year that is not a target year, that scheme year (the 'penalty year') is later than the first target year, and the total amount of biodegradable municipal waste sent in the penalty year to landfills in pursuance of arrangements made by waste disposal authorities in the United Kingdom exceeds the amount specified¹³ for the last target year before the penalty year, the authority is also liable to a supplementary penalty¹⁴.

1 As to allocating authorities see PARA 632.

2 I.e. under Waste and Emissions Trading Act 2003 s 4: see PARA 633.

3 As to scheme years see PARA 631 note 13.

4 As to waste disposal authorities see PARA 620 note 7.

5 As to the meaning of 'biodegradable municipal waste' see PARA 631 note 12.

6 As to the meaning of 'landfill' see PARA 631.

7 As to landfill allowances see PARA 633.

8 Waste and Emissions Trading Act 2003 s 9(1). For the purposes of s 9, the landfill allowances available to a waste disposal authority for a scheme year are the landfill allowances held by the authority at the end of the year that have not been utilised for an earlier scheme year and that, in the case of: (1) allowances allocated to the authority for an earlier or later scheme year; or (2) allowances originally allocated to another waste disposal authority, are allowed by regulations under s 6 (see PARA 634) or s 7 (see PARA 635) to be utilised by the authority for the year: s 9(5).

9 Waste and Emissions Trading Act 2003 s 9(2). As to penalties see PARA 634 note 18.

10 As to target years see PARA 631 note 14.

11 I.e. specified under the Waste and Emissions Trading Act 2003 s 1(1)(a): see PARA 631. As to the meaning of 'United Kingdom' see PARA 1 note 2.

12 Waste and Emissions Trading Act 2003 s 9(3).

13 I.e. specified under the Waste and Emissions Trading Act 2003 s 1(1)(a): see PARA 631.

14 Waste and Emissions Trading Act 2003 s 9(4). Provision under s 26(3) (see PARA 634 note 18) relating to supplementary penalties under s 9(3) or (4) in respect of waste sent to landfills in a scheme year may be made after the end of that year: s 26(4). As to the meaning of 'waste' see PARA 628 note 2.

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637. Monitoring authorities.

Each allocating authority¹ must by regulations² appoint a person to be the monitoring authority for its area³. The monitoring authority for an area must: (1) monitor the operation in its area of provisions⁴ relating to landfill allowances⁵ and, in particular, monitor how much biodegradable municipal waste⁶ is sent to landfills⁷ in pursuance of arrangements made by waste disposal authorities⁸ in the area⁹; (2) audit the performance of waste disposal authorities in the area in complying with their obligations¹⁰; (3) comply with any directions by the allocating authority for the area as to the supply to the allocating authority of information acquired by the monitoring authority in carrying out any of its functions¹¹; (4) without delay notify the allocating authority for the area of any case where it appears to the monitoring authority that a waste disposal authority in the area is or may be liable to a penalty¹²; (5) comply with any directions by the allocating authority for the area as to the supply to the allocating authority of information or evidence in connection with any case where it appears to the allocating authority or the monitoring authority that a waste disposal authority in the area is or may be liable to a penalty¹³; (6) co-operate with the monitoring authority for any other area¹⁴.

1 As to allocating authorities see PARA 632.

2 As to the power to make regulations see PARA 631 note 10.

3 Waste and Emissions Trading Act 2003 s 10(1). The monitoring authority for England and Wales is the Environment Agency: Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 10; Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 5. An allocating authority is required to carry out certain consultations before making any regulations under the Waste and Emissions Trading Act 2003 s 10: see PARA 634 note 6. As to the Environment Agency see PARA 68 et seq.

4 I.e. the provisions of the Waste and Emissions Trading Act 2003 Pt 1 Ch 1 (ss 1-28).

5 As to landfill allowances see PARA 633.

6 As to the meaning of 'biodegradable municipal waste' see PARA 631 note 12.

7 As to the meaning of 'landfill' see PARA 631.

8 As to waste disposal authorities see PARA 620 note 7.

9 Waste and Emissions Trading Act 2003 s 10(2)(a).

10 Waste and Emissions Trading Act 2003 s 10(2)(b). The obligations referred to in the text are the waste disposal authorities' obligations in Pt 1 Ch 1: s 10(2)(b).

11 Waste and Emissions Trading Act 2003 s 10(2)(c). The functions referred to in the text are the monitoring authority's functions under Pt 1 Ch 1: s 10(2)(c).

12 Waste and Emissions Trading Act 2003 s 10(2)(d). The penalty referred to in the text is a penalty under Pt 1 Ch 1: s 10(2)(d). As to penalties see PARA 634 note 18.

13 Waste and Emissions Trading Act 2003 s 10(2)(e). The penalty referred to in the text is a penalty under Pt 1 Ch 1: s 10(2)(e).

14 Waste and Emissions Trading Act 2003 s 10(2)(f).

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638. Scheme regulations.

An allocating authority¹ may by regulations² make provision for the purpose of carrying into effect, in relation to its area, of provisions³ relating to landfill allowances⁴. Any such regulations may, in particular, make provision: (1) about the manner of allocation of, or evidence of entitlement to, landfill allowances⁵; (2) for the maintaining of registers of matters relating to landfill allowances⁶; (3) about what amounts to the utilisation of landfill allowances⁷; (4) for determining the amount of biodegradable municipal waste⁸ in an amount of waste⁹; (5) imposing, or enabling the imposition of, requirements on waste disposal authorities¹⁰ in the area to produce evidence as to amounts of waste, or of waste of any description, sent to landfills¹¹ in pursuance of arrangements made by them¹²; (6) requiring waste disposal authorities in the area, in exercising functions in relation to waste that is or contains biodegradable municipal waste, to have regard to guidance specified in the regulations, including future guidance¹³; (7) imposing or conferring additional functions on the monitoring authority¹⁴ for the area¹⁵. The regulations may also provide for a waste disposal authority that fails to comply with a requirement of the regulations to be liable to a penalty¹⁶.

1 As to allocating authorities see PARA 632.

2 As to the power to make regulations see PARA 631 note 10.

3 I.e. the provisions the Waste and Emissions Trading Act 2003 Pt 1 Ch 1 (ss 1-28).

4 Waste and Emissions Trading Act 2003 s 11(1). As to landfill allowances see PARA 633. An allocating authority is required to carry out certain consultations before making any regulations under s 11: see PARA 634 note 6.

5 Waste and Emissions Trading Act 2003 s 11(2)(a).

6 Waste and Emissions Trading Act 2003 s 11(2)(b). As to electronic registers see the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 4; and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 4. As to the landfill allowances register see the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 16; and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 10. As to the penalties register see the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 17; and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 11.

7 Waste and Emissions Trading Act 2003 s 11(2)(c). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 15.

8 As to the meaning of 'biodegradable municipal waste' see PARA 631 note 12.

9 Waste and Emissions Trading Act 2003 s 11(2)(d). As to the meaning of 'waste' see PARA 628 note 2. See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 13; and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, regs 8, 9.

10 As to waste disposal authorities see PARA 620 note 7.

11 As to the meaning of 'landfill' see PARA 631.

12 Waste and Emissions Trading Act 2003 s 11(2)(e).

13 Waste and Emissions Trading Act 2003 s 11(2)(f). A waste disposal authority, in exercising functions in relation to waste that is or contains biodegradable municipal waste, must have regard to any guidance issued,

in relation to England, by the Secretary of State under the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 23; and, in relation to Wales, by the Welsh Ministers for the purposes of the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 16. As to the Secretary of State see PARA 58. As to the Welsh Ministers see PARA 59.

14 As to monitoring authorities see PARA 637.

15 Waste and Emissions Trading Act 2003 s 11(2)(g).

16 Waste and Emissions Trading Act 2003 s 11(3). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 21, 22; and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, regs 14(4), 15. As to penalties see PARA 634 note 18.

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639. Powers of allocating authorities in relation to waste disposal authorities.

An allocating authority¹ may, for purposes connected with the sending of biodegradable municipal waste² to landfills³, by regulations⁴ make provision for requiring waste disposal authorities⁵ in its area to: (1) maintain prescribed⁶ records⁷; (2) gather prescribed information by carrying out prescribed operations on prescribed waste⁸; (3) make prescribed returns to the monitoring authority⁹ for the area¹⁰.

An allocating authority may by regulations make provision for enabling the monitoring authority for its area, or persons authorised by the monitoring authority: (a) to require waste disposal authorities in the area to produce, for inspection or for removal for inspection elsewhere, records they are required to maintain¹¹; (b) to require waste disposal authorities in the area to supply the monitoring authority with: (i) information about matters connected with the sending of biodegradable municipal waste to landfills¹²; (ii) evidence to substantiate information supplied for the purpose of complying with the requirements imposed under head (i) above¹³; (iii) evidence to substantiate entries in records maintained for the purpose of complying with provision made under heads (1) to (3) above¹⁴; (c) to specify the form in which, the place at which and the time at or by which records are to be produced or information or evidence is to be supplied¹⁵; (d) to copy records that are produced¹⁶.

1 As to allocating authorities see PARA 632.

2 As to the meaning of 'biodegradable municipal waste' see PARA 631 note 12.

3 As to the meaning of 'landfill' see PARA 631.

4 As to the power to make regulations see PARA 631 note 10.

5 As to waste disposal authorities see PARA 620 note 7.

6 'Prescribed' means prescribed by or under regulations under the Waste and Emissions Trading Act 2003 s 12(1) (see the text and notes 7-10): s 12(4).

7 Waste and Emissions Trading Act 2003 s 12(1)(a). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 3, 11(1)-(4) (reg 11(2) amended by SI 2005/895); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, regs 3, 6(1)-(3) (reg 6(2) amended by SI 2005/1820).

8 Waste and Emissions Trading Act 2003 s 12(1)(b). As to the meaning of 'waste' see PARA 628 note 2.

9 As to monitoring authorities see PARA 637.

10 Waste and Emissions Trading Act 2003 s 12(1)(c). An allocating authority is required to carry out certain consultations before making any regulations under s 12: see PARA 634 note 6. See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 3, 11(5); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, regs 3, 6(4).

11 Waste and Emissions Trading Act 2003 s 12(2)(a). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 11(6)(a); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 6(5)(a). The records referred to in the text are the records monitoring authorities are required to maintain by provision made under the Waste and Emissions Trading Act 2003 s 12(1) (see the text and notes 1-10): s 12(2)(a).

12 Waste and Emissions Trading Act 2003 s 12(2)(b)(i).

13 Waste and Emissions Trading Act 2003 s 12(2)(b)(ii).

14 Waste and Emissions Trading Act 2003 s 12(2)(b)(iii). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 11(6)(b); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 6(5)(b).

15 Waste and Emissions Trading Act 2003 s 12(2)(c). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 3, 11(6); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, regs 3, 6(5).

16 Waste and Emissions Trading Act 2003 s 12(2)(d). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 11(7); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 6(6). A waste disposal authority that fails to comply with a requirement imposed on it under the Waste and Emissions Trading Act 2003 s 12 is liable to a penalty: s 12(3).

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640. Powers of allocating authorities in relation to landfill operators.

An allocating authority¹ may, for purposes connected with the sending of biodegradable municipal waste² to landfills³, by regulations⁴ make provision for requiring a person concerned in the operation of a landfill to: (1) maintain prescribed⁵ records⁶; (2) gather prescribed information by carrying out prescribed operations on prescribed waste⁷; (3) make prescribed returns, or provide prescribed information or prescribed evidence, to prescribed persons⁸.

An allocating authority may by regulations make provision enabling the monitoring authority⁹ for its area, or persons authorised by the monitoring authority: (a) to require persons concerned in the operation of a landfill to produce records related to the operation of the landfill for inspection or for removal for inspection elsewhere¹⁰; (b) to specify the form in which, the place at which and the time at or by which records are to be produced¹¹; (c) to copy records that are produced¹²; (d) to enter premises¹³ for the purposes of: (i) finding records relating to the operation of a landfill¹⁴; (ii) inspecting them or removing them for inspection elsewhere¹⁵; and (iii) copying them¹⁶; (e) to require persons to afford, to a person exercising any power conferred under heads (a) to (d) above, such facilities and assistance within their control or in relation to which they have responsibilities as are necessary to enable the person to exercise the power¹⁷.

1 As to allocating authorities see PARA 632.

2 As to the meaning of 'biodegradable municipal waste' see PARA 631 note 12.

3 As to the meaning of 'landfill' see PARA 631.

4 As to the power to make regulations see PARA 631 note 10.

5 'Prescribed' means prescribed by or under such regulations under the Waste and Emissions Trading Act 2003 s 13(1) (see the text and notes 6-8): s 13(7).

6 Waste and Emissions Trading Act 2003 s 13(1)(a). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 3, 12(1)-(3) (reg 12(1) amended by SI 2005/895); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, regs 3, 7(1), (2) (reg 7(1) amended by SI 2005/1820).

7 Waste and Emissions Trading Act 2003 s 13(1)(b). An allocating authority is required to carry out certain consultations before making any regulations under s 13: see PARA 634 note 6.

8 Waste and Emissions Trading Act 2003 s 13(1)(c). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 3, 12(4); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, regs 3, 7(3). A person commits an offence if he fails to comply with a requirement imposed on him under the Waste and Emissions Trading Act 2003 s 13(1): s 13(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: s 13(5). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

9 As to monitoring authorities see PARA 637.

10 Waste and Emissions Trading Act 2003 s 13(3)(a). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 12(5); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 7(4). See note 17.

11 Waste and Emissions Trading Act 2003 s 13(3)(b). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 12(5); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 7(4). See note 17.

12 Waste and Emissions Trading Act 2003 s 13(3)(c). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 12(6); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 7(5). See note 17.

13 Provision may be made allowing the monitoring authority to enter premises with or without a constable, with any necessary equipment or material and, if need be, by force: Waste and Emissions Trading Act 2003 s 13(3)(d). See note 17.

14 Waste and Emissions Trading Act 2003 s 13(3)(d)(i). See note 17.

15 Waste and Emissions Trading Act 2003 s 13(3)(d)(ii). See note 17.

16 Waste and Emissions Trading Act 2003 s 13(3)(d)(iii). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 12(7); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 7(6). See note 17.

17 Waste and Emissions Trading Act 2003 s 13(3)(e). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, reg 12(8), (9); and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, reg 7(7), (8).

A person commits an offence if: (1) he intentionally obstructs a person exercising a power conferred under the Waste and Emissions Trading Act 2003 s 13(3) (see heads (a)-(e) in the text); or (2) he fails to comply with a requirement imposed on him under s 13(3): s 13(4). A person guilty of an offence under head (1) above is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: s 13(5). A person guilty of an offence under head (2) above is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 13(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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641. Disclosure of information by monitoring and allocating authorities.

A monitoring authority¹ may disclose any of its monitoring information² to any other monitoring authority, or to any allocating authority³, for the purpose of facilitating the carrying out by the recipient of any of its functions⁴. An allocating authority may disclose any of its monitoring information⁵ to any other allocating authority for the purpose of facilitating the carrying out by the recipient of any of its functions⁶.

1 As to monitoring authorities see PARA 637.

2 A monitoring authority's 'monitoring information' is information or evidence: (1) acquired by it in carrying out any of its functions under the Waste and Emissions Trading Act 2003 Pt 1 Ch 1 (ss 1-28); or (2) disclosed to it after having been acquired by another monitoring authority in carrying out any of its functions under Pt 1 Ch 1: s 14(3).

3 As to allocating authorities see PARA 632.

4 Waste and Emissions Trading Act 2003 s 14(1). The functions referred to in the text are the monitoring authority's functions under Pt 1 Ch 1: s 14(1). Section 14(1) is additional to, and does not prejudice the generality of, the Environment Act 1995 s 113 (see PARA 153): Waste and Emissions Trading Act 2003 s 14(5).

5 An allocating authority's 'monitoring information' is information or evidence: (1) acquired by it in carrying out any of its functions under the Waste and Emissions Trading Act Pt 1 Ch 1; or (2) disclosed to it after having been acquired by a monitoring authority, or another allocating authority, in carrying out any of its functions under Pt 1 Ch 1: s 14(4).

6 Waste and Emissions Trading Act 2003 s 14(2). The functions referred to in the text are the allocating authority's functions under Pt 1 Ch 1: s 14(2). Section 14(2) is additional to, and does not prejudice the generality of, the Environment Act 1995 Act s 113 (see PARA 153): Waste and Emissions Trading Act 2003 s 14(5).

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642. Monitoring information and registers.

An allocating authority¹ may by regulations² make provision requiring the monitoring authority³ for its area to maintain a register containing such of its monitoring information⁴ as is of a description specified by the regulations⁵.

An allocating authority may, in relation to a register that a person is required to maintain by regulations made by the authority, by regulations: (1) make provision for public inspection of such of the information contained in the register as is of a description specified by the regulations⁶; (2) make provision for members of the public to obtain copies of information in the register that is open to public inspection under head (1) above, including provision for the payment of reasonable charges⁷.

1 As to allocating authorities see PARA 632.

2 As to the power to make regulations see PARA 631 note 10.

3 As to monitoring authorities see PARA 637.

4 A monitoring authority's 'monitoring information' is information or evidence: (1) acquired by it in carrying out any of its functions under the Waste and Emissions Trading Act 2003 Pt 1 Ch 1 (ss 1-28); or (2) disclosed to it after having been acquired by another monitoring authority in carrying out any of its functions under Pt 1 Ch 1: s 15(2).

5 Waste and Emissions Trading Act 2003 s 15(1). See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 4, 16; and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, regs 4, 10. An allocating authority is required to carry out certain consultations before making any regulations under the Waste and Emissions Trading Act 2003 s 15: see PARA 634 note 6.

6 Waste and Emissions Trading Act 2003 s 16(a).

7 Waste and Emissions Trading Act 2003 s 16(b). An allocating authority is required to carry out certain consultations before making any regulations under s 16: see PARA 634 note 6. See the Landfill Allowances and Trading Scheme (England) Regulations 2004, SI 2004/3212, regs 4, 19; and the Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490, regs 4, 12.

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643. Strategies for reducing landfilling of biodegradable waste.

The Secretary of State¹ must have a strategy for reducing the amount of biodegradable waste² from England that goes to landfills³, and the amount of biodegradable waste from outside England that goes to landfills in England⁴. Such a strategy must, in particular, include measures to achieve the targets specified⁵ for England⁶. The Secretary of State must set out in a statement any policy formulated for the purposes of his strategy⁷.

Corresponding provision is made in relation to Wales⁸.

1 As to the Secretary of State see PARA 58.

2 As to the meaning of 'biodegradable waste' see PARA 631 note 12.

3 As to the meaning of 'landfill' see PARA 631.

4 Waste and Emissions Trading Act 2003 s 17(1). Where s 17(1) is satisfied by policies set out in a statement under the Environmental Protection Act 1990 s 44A (see PARA 627), if the statement was prepared before the coming into force of the Waste and Emissions Trading Act 2003 s 17(1) it does not matter that the policies were not formulated for the purposes of s 17(1): s 17(7). As to the meaning of 'England' see PARA 1 note 2.

5 As specified under the Waste and Emissions Trading Act 2003 s 1 and s 2 (see PARA 631): s 17(2).

6 Waste and Emissions Trading Act 2003 s 17(2). Such measures include, in particular, measures to achieve the targets by recycling, composting, biogas production, materials recovery or energy recovery: s 17(3).

7 Waste and Emissions Trading Act 2003 s 17(5). Before formulating policy for the purposes of s 17(1), the Secretary of State must: (1) consult the Scottish Ministers, the Welsh Ministers, the Department for Environment, Food and Rural Affairs, the Environment Agency and the Mayor of London; (2) consult such bodies or persons appearing to him to be representative of the interests of local government as he considers appropriate; (3) consult such bodies or persons appearing to him to be representative of the interests of industry as he considers appropriate; and (4) carry out such public consultation as he considers appropriate: see s 17(4). As to the Secretary of State see PARA 58. As to the Welsh Ministers see PARA 59. As to the Department for Environment, Food and Rural Affairs see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 452 et seq. As to the Environment Agency see PARA 68 et seq. As to the Mayor of London see PARA 100; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 81 et seq.

The Secretary of State must, as soon as a statement is prepared for the purposes of s 17(5), send a copy of it to the Scottish Ministers, the Welsh Ministers, and the Department for Environment, Food and Rural Affairs: see s 17(6).

8 In relation to Wales, the Assembly must consult the Secretary of State, the Scottish Ministers, the Department for Environment, Food and Rural Affairs and the Environment Agency, and the bodies and persons mentioned in note 7 heads (2)-(4): Waste and Emissions Trading Act 2003 s 19(4). As to the corresponding strategy for Northern Ireland see s 20.

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(iii) Minimisation of Generation of Waste

644. Power to take steps to minimise generation of controlled waste.

A relevant authority¹ may do, arrange for the doing of, or contribute towards the expenses of the doing of, anything which in its opinion is necessary or expedient for the purpose of minimising the quantities of controlled waste², or controlled waste of any description, generated in its area³. Where a relevant authority in England (the 'first authority') proposes to exercise any of its powers under these provisions, it must before doing so consult about the proposal every other relevant authority whose area includes all or part of the area of the first authority⁴.

1 For these purposes, 'relevant authority' means a waste collection authority or a waste disposal authority: Environmental Protection Act 1990 s 63A(3) (s 63A added by the Waste Minimisation Act 1998 s 1). As to the meaning of 'waste collection authority' see PARA 620 note 8; and as to the meaning of 'waste disposal authority' see PARA 620 note 7.

2 As to the meaning of 'controlled waste' see PARA 624.

3 Environmental Protection Act 1990 s 63A(1) (as added: see note 1). Any increase attributable to any provision of the Waste Minimisation Act 1998 in the sums payable under any other enactment out of money provided by Parliament is to be paid out of money so provided: see s 2. This provision does not apply in so far as such a sum is payable by the Welsh Ministers. As to the Welsh Ministers see PARA 59.

4 Environmental Protection Act 1990 s 63A(2) (as added: see note 1).

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(iv) Duty of Care

645. Duty of care etc as respects waste.

It is the duty of any person¹ who imports, produces, carries, keeps, treats or disposes of controlled waste² or, as a broker, has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances:

- 1542 (1) to prevent any contravention by any other person of the provisions prohibiting unauthorised or harmful deposit, treatment or disposal of waste³;
- 1543 (2) to prevent any contravention by any other person of certain provisions on environmental permits or of a condition of an environmental permit⁴;
- 1544 (3) to prevent the escape of the waste from his control or that of any other person⁵; and
- 1545 (4) on the transfer of the waste, to secure: (a) that the transfer is only to an authorised person⁶ or to a person for authorised transport purposes⁷; and (b) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of the provisions prohibiting unauthorised or harmful deposit, treatment or disposal of waste⁸ or any contravention of a permit granted under the Environmental Permitting (England and Wales) Regulations 2007⁹, or a contravention of a condition of an environmental permit and to comply with the duty under this provision as respects the escape of waste¹⁰.

It is the duty of any person who is responsible for the management of extractive waste¹¹ to take all such measures applicable to him in that capacity as are reasonable in the circumstances:

- 1546 (a) to prevent any contravention by any other person of the provisions prohibiting unauthorised or harmful deposit, treatment or disposal of waste¹²;
- 1547 (b) to prevent any contravention by another person of certain provisions on environmental permits¹³ or of a condition of an environmental permit; and
- 1548 (c) to prevent the escape of the waste from his control or that of any other person¹⁴.

The Secretary of State may, by regulations, make provision imposing requirements on any person who is subject to the duty imposed by the above provisions¹⁵ as respects the making and retention of documents and the furnishing of documents or copies of documents¹⁶.

Any person who fails to comply with the duty imposed by the above provisions¹⁷ or with any such requirement is liable to a penalty¹⁸.

The Secretary of State must, after consultation with such persons or bodies as appear to him representative of the interests concerned, prepare and issue a code of practice for the purpose of providing to persons practical guidance on how to discharge the duty imposed on them by the above provisions¹⁹.

1 'Person' is to be widely interpreted: see *R v Hertfordshire County Council, ex p Green Environmental Industries Ltd and John Moynihan* [1996] JPL B126, [1997] Env LR 114, DC; on appeal [2000] 2 AC 412, [2000] 1 All ER 773, HL.

The duty imposed by the Environmental Protection Act 1990 s 34(1) does not apply to an occupier of domestic property as respects the household waste produced on the property: s 34(2). As to the meaning of 'household waste' see PARA 624; and as to the meaning of 'waste' see PARA 623.

It is, however, the duty of the occupier of any domestic property in England or Wales to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person (see note 6) or to a person for authorised transport purposes (see note 7): Environmental Protection Act 1990 s 34(2A) (added by SI 2005/2900; and amended by SI 2006/123).

2 As to the meaning of 'controlled waste' see PARA 624. As to the meaning of 'disposal' see PARA 620 note 12; and as to the treatment of waste see PARA 620 note 12. As to waste producers see *Gotech Industrial and Environmental Services Ltd v Friel* 1995 SCCR 22 (decided under earlier legislation). As to keeping waste see *R v Leighton and Town and Country Refuse Collection Ltd* [1997] Env LR 411, CA. See also *Dudley v Holland* [1965] 1 QB 31, [1963] 3 All ER 732, DC.

3 Environmental Protection Act 1990 s 34(1)(a). The provisions referred to in the text are those of s 33: see PARA 655. A breach of s 34(1)(a) can occur notwithstanding that there is no actual offence committed under s 33. As to failure to take all such applicable measures as are reasonable see *Shanks and McEwan (Teesside) Ltd v Environment Agency* [1999] QB 333, [1997] 2 All ER 332, DC. See also *Claimants appearing on the Register of the Corby Group Litigation v Corby Borough Council* [2009] EWHC 1944 (TCC), [2009] All ER (D) 312 (Jul) (defendant liable in public nuisance, negligence and breach of statutory duty under the Environmental Protection Act 1990 ss 33, 34 in relation to birth defects attributable to reclamation work carried out by the defendant).

As to powers of seizure where there is a belief that a vehicle has been, is being or is about to be used in the commission of an offence under the Environmental Protection Act 1990 s 33 or s 34 see ss 34B, 34C; and PARA 659.

4 Environmental Protection Act 1990 s 34(1)(aa) (substituted by SI 2007/3538). The provisions referred to in the text are the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 12 (requirement for an environmental permit): see PARA 663. As to the meaning of 'environmental permit' see PARA 664; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538).

5 Environmental Protection Act 1990 s 34(1)(b). See *Gateway Professional Services (Management) Ltd v Kingston Upon Hull Council* [2004] EWHC 597 (Admin), [2004] JPL 1577, [2004] Env LR 42 ('escape' does not encompass the deliberate depositing of commercial waste by a company employee on land belonging to another in contravention of company instructions). See also *Camden London Borough Council v Mortgage Times Group Ltd* [2006] EWHC 1615 (Admin), (2006) Times, 15 August, [2006] All ER (D) 11 (Jul), DC (an escape by itself is not a prerequisite of liability; a failure to exercise duty of care is sufficient).

6 The following are authorised persons for the purposes of the Environmental Protection Act 1990 s 34(1)(c) and s 34(2A) (see note 1): (1) any authority which is a waste collection authority for the purposes of Pt II (ss 29-78) (see PARA 620 note 8); (2) any person who is the holder of an environmental permit in relation to a waste operation; (3) any person who is carrying on an exempt waste operation; (4) any person to whom the Environmental Protection Act 1990 s 33(1) does not apply by virtue of regulations under s 33(3) (see PARA 655); (5) any person registered as a carrier of controlled waste under the Control of Pollution (Amendment) Act 1989 s 2 (see PARA 710); and (6) any person who is not required to be so registered by virtue of regulations under s 1(3) (see PARA 709): Environmental Protection Act 1990 s 34(3) (amended by SI 2005/2900; and SI 2007/3538). As to the meanings of 'waste operation' (see head (2) above) and 'exempt waste operation' (see head (3) above) see PARA 663 note 1; definitions applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538).

The Secretary of State may by regulations amend the Environmental Protection Act 1990 s 34(3) so as to add, whether generally or in such circumstances as may be prescribed in the regulations, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of s 34(1)(c) and s 34(2A): s 34(3A) (added by the Environment Act 1995 Sch 22 para 65; and amended by SI 2005/2900). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

7 Environmental Protection Act 1990 s 34(1)(c)(i). The following are authorised transport purposes for the purposes of s 34(1)(c) and s 34(2A) (see note 1): (1) the transport of controlled waste within the same premises between different places in those premises; (2) the transport to a place in Great Britain of controlled waste which has been brought from a country or territory outside Great Britain not having been landed in Great Britain until it arrives at that place; and (3) the transport by air or sea of controlled waste from a place in Great Britain

to a place outside Great Britain: s 34(4) (amended by SI 2005/2900). As to the meaning of 'transport' see PARA 709 note 4; definition applied by the Environmental Protection Act 1990 s 34(4) (as so amended). As to the meaning of 'Great Britain' see PARA 1 note 2.

8 The provisions referred to in the text are those of the Environmental Protection Act 1990 s 33: see PARA 655.

9 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 12: see note 4.

10 Environmental Protection Act 1990 s 34(1)(c)(ii) (amended by SI 2007/3538). For this purpose, a transfer of waste in stages is to be treated as taking place when the first stage of the transfer takes place; and a series of transfers between the same parties of waste of the same description is to be treated as a single transfer taking place when the first of the transfers in the series takes place: Environmental Protection Act 1990 s 34(4A) (added by the Deregulation and Contracting Out Act 1994 s 33(1)). The Environmental Protection Act 1990 s 34(4A) has retrospective effect, except in relation to any proceedings for failure to comply with the duty imposed by s 34(1) which were commenced before 3 November 1994: see the Deregulation and Contracting Out Act 1994 s 33(2). Where any such proceedings have not been disposed of before that date, it is a defence to show that the conduct in question would not have constituted a breach of the duty concerned had s 33(1) been in force at the time: s 33(3).

11 As to the meaning of 'extractive waste' see PARA 663 note 1; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538).

12 Ie the Environmental Protection Act 1990 s 33: see PARA 655.

13 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 12 (requirement for an environmental permit): see PARA 663.

14 Environmental Protection Act 1990 s 34(1A) (added by SI 2009/1799).

15 Ie the duty imposed by the Environmental Protection Act 1990 s 34(1): see the text and notes 1-10.

16 Environmental Protection Act 1990 s 34(5). As to the regulations made see the Environmental Protection (Duty of Care) Regulations 1991, SI 1991/2839 (amended by SI 1996/972; SI 2003/63; SI 2003/1720; and SI 2007/3538).

As to fixed penalty notices in regard to discharge of liability for any offence of failure to comply with the relevant duty see PARA 646.

17 Ie imposed by the Environmental Protection Act 1990 s 34(1) (see the text and notes 1-10), s 34(1A) (see the text and notes 11-14) or s 34(2A) (see note 1).

18 Environmental Protection Act 1990 s 34(6) (amended by SI 2005/2900; and SI 2009/1799). The penalty on summary conviction is a fine not exceeding the statutory maximum, and on conviction on indictment is a fine: see the Environmental Protection Act 1990 s 34(6) (as so amended). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

As to fixed penalty notices in regard to discharge of liability for any such offence see PARA 646.

19 Environmental Protection Act 1990 s 34(7). The provisions referred to in the text are those of s 34(1): see the text and notes 1-10.

The Secretary of State may from time to time revise a code of practice issued under s 34(7) by revoking, amending or adding to the provisions of the code: s 34(8). A code of practice prepared in pursuance of s 34(7) must be laid before both Houses of Parliament: s 34(9). A code of practice issued under s 34(7) is admissible in evidence and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it must be taken into account in determining that question: s 34(10). Different codes of practice may be prepared and issued under s 34(7) for different areas: s 34(11). As to the Code of Practice see 'Waste Management: the Duty of Care: a Code of Practice March 1996' (HMSO), which replaced an earlier code produced in 1991. At the date at which this volume states the law, a consultation was being undertaken on a revised duty of care in respect of waste management: as to the relevant website, at that date, see www.defra.gov.uk.

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646. Fixed penalty notices.

Where it appears to an enforcement authority¹ that a person has failed to comply with a duty to furnish documents to that authority imposed under regulations made at any time², the authority may serve on that person a notice offering him the opportunity of discharging any liability to conviction for an offence³ by payment of a fixed penalty⁴. Where a person is given such a notice⁵ in respect of an offence: (1) no proceedings may be instituted for that offence before expiration of the period of 14 days following the date of the notice⁶; and (2) he may not be convicted of that offence if he pays the fixed penalty before the expiration of that period⁷. The enforcement authority to which a fixed penalty is payable as described above may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority⁸. In any proceedings a certificate which purports to be signed on behalf of the chief finance officer⁹ of the enforcement authority, and states that payment of a fixed penalty was or was not received by a date specified in the certificate, is evidence of the facts stated¹⁰.

The Environment Agency must pay amounts received by it under these provisions on fixed penalty notices¹¹ to the Secretary of State¹². A waste collection authority may use amounts received by it¹³ (its 'fixed penalty receipts') only for the purposes of its functions under Part II of the Environmental Protection Act 1990¹⁴ (including functions relating to the enforcement of offences under Part II), and such other of its functions as may be specified in regulations made by the appropriate person¹⁵. A waste collection authority must supply the appropriate person with such information relating to its use of its fixed penalty receipts as the appropriate person may require¹⁶. The appropriate person may by regulations¹⁷: (a) make provision for what a waste collection authority is to do with its fixed penalty receipts pending their being used for the purposes of functions of the authority¹⁸, or if they are not so used before such time after their receipt as may be specified by the regulations¹⁹; (b) make provision for accounting arrangements in respect of a waste collection authority's fixed penalty receipts²⁰.

1 For these purposes, 'enforcement authority' means the Environment Agency or a waste collection authority: Environmental Protection Act 1990 s 34A(14) (s 34A added by the Clean Neighbourhoods and Environment Act 2005 s 45). As to the Environment Agency see PARA 68 et seq. As to the meaning of 'waste collection authority' see PARA 620 note 8.

2 Environmental Protection Act 1990 s 34A(1) (as added: see note 1). The regulations referred to in the text are those made under s 34(5): see PARA 645.

3 Ie under the Environmental Protection Act 1990 s 34(6): see PARA 645.

4 Environmental Protection Act 1990 s 34A(2) (as added: see note 1). The fixed penalty payable to an enforcement authority under s 34A is, subject to s 34A(10), £300: s 34A(9) (as so added). The appropriate person may by order substitute a different amount for the amount for the time being specified in s 34A(9): s 34A(10) (as so added). 'Appropriate person' means: (1) in relation to England, the Secretary of State (see PARA 58); (2) in relation to Wales, the Welsh Ministers (see PARA 59): see s 29(1A) (added by the Clean Neighbourhoods and Environment Act 2005 s 51).

Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in the Environmental Protection Act 1990 s 34A(5)(c) (see note 5 head (3)) at the address so mentioned: s 34A(6) (as so added). Where a letter is sent in accordance with s 34A(6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post: s 34A(7) (as so added).

5 The form of a notice under the Environmental Protection Act 1990 s 34A is to be such as the appropriate person may by order prescribe: s 34A(8) (as added: see note 1). At the date at which this volume states the law no such order had been made.

A notice under s 34A must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence: s 34A(4) (as so added). Such a notice must also state: (1) the period during which, by virtue of s 34A(3) (see heads (1) and (2) in the text) proceedings will not be taken for the offence; (2) the amount of the fixed penalty; and (3) the person to whom and the address at which the fixed penalty may be paid: s 34A(5) (as so added).

6 Environmental Protection Act 1990 s 34A(3)(a) (as added: see note 1).

7 Environmental Protection Act 1990 s 34A(3)(b) (as added: see note 1).

8 Environmental Protection Act 1990 s 34A(11) (as added: see note 1). The appropriate person may by regulations restrict the extent to which, and the circumstances in which, an enforcement authority may make provision under s 34A(11): s 34A(12) (as so added). As to the regulations made under s 34A(12) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175. See also the Environmental Offences (Use of Fixed Penalty Receipts) (Wales) Regulations 2007, SI 2007/739 (amended by SI 2008/663); and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663.

9 For these purposes, 'chief finance officer', in relation to an enforcement authority, means the person having responsibility for the financial affairs of the authority: Environmental Protection Act 1990 s 34A(14) (as added: see note 1).

10 Environmental Protection Act 1990 s 34A(13) (as added: see note 1).

11 *le* under the Environmental Protection Act 1990 s 34A.

12 Environmental Protection Act 1990 s 73A(1) (s 73A added by the Clean Neighbourhoods and Environment Act 2005 s 52).

13 *le* received under the Environmental Protection Act 1990 s 34A (see the text and notes 1-10) and s 47ZA (see PARA 696).

14 *le* under the Environmental Protection Act 1990 Pt II (ss 29-78).

15 Environmental Protection Act 1990 s 73A(2) (as added: see note 12). As to the meaning of 'appropriate person' see note 4.

Regulations under s 73A(2) may, in particular, have the effect that a waste collection authority may use its fixed penalty receipts for the purposes of any of its functions: s 73A(3) (as so added). As to the regulations made under s 73A(2), (3) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175.

16 Environmental Protection Act 1990 s 73A(4) (as added: see note 12).

17 Before making regulations under the Environmental Protection Act 1990 s 73A, the appropriate person must consult: (1) the waste collection authorities to which the regulations are to apply; (2) such other persons as the appropriate person thinks fit: s 73A(7) (as added: see note 12). Such regulations may make different provision for different purposes (including different provision in relation to different authorities or different descriptions of authority): s 73A(8) (as so added). The powers to make regulations so conferred are, for the purposes of the Local Government Act 2003 s 100(1), to be regarded as included among the powers mentioned in s 100(2) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 789): Environmental Protection Act 1990 s 73A(9) (as so added).

18 *le* the functions referred to in the Environmental Protection Act 1990 s 73A(2): see the text and note 15.

19 Environmental Protection Act 1990 s 73A(5)(a) (as added: see note 12). The provision that may be made if the receipts are not so used includes, in particular, provision for the payment of sums to a person (including the appropriate person) other than the waste collection authority: s 73A(6) (as so added).

20 Environmental Protection Act 1990 s 73A(5)(b) (as added: see note 12).

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(v) Producer Responsibility

647. Introduction.

There is European Union legislation involving 'producer responsibility'¹, and legislation has been made in the United Kingdom² for the purpose of implementing the relevant Directives³.

Also of relevance is the power under the Climate Change Act 2008 to make provision by regulations about charging for the supply of single use carrier bags⁴.

1 See PARAS 33, 39. In the context of 'producer responsibility' reference should also be made to other European Union waste initiatives: see European Commission *Communication on Integrated Product Policy* (COM (2003) 302 final).

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 As to the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871 (made under the European Communities Act 1972 s 2(2) and the Environment Act 1995 ss 93-95: see PARAS 648, 649) see PARA 650. As to the End-of-Life Vehicles Regulations 2003, SI 2003/2635 (made under the European Communities Act 1972 s 2(2)) see PARA 651. As to the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289 (also made under the European Communities Act 1972 s 2(2)) see PARA 652.

4 See the Climate Change Act 2008 s 77, Sch 6; and PARA 653.

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648. Power to make regulations and directions concerning producer responsibility obligations.

For the purpose of promoting or securing an increase in the re-use, recovery¹ or recycling of products or materials², the Secretary of State³ may by regulations make provision for imposing producer responsibility obligations⁴ on such persons, and in respect of such products or materials, as may be prescribed⁵.

The power of the Secretary of State to make regulations is exercisable only after consultation with bodies or persons appearing to him to be representative of bodies or persons whose interests are, or are likely to be, substantially affected by the regulations which he proposes to make⁶.

Except in the case of regulations for the implementation of: (1) any obligations of the United Kingdom⁷ under the Community treaties⁸; or (2) any international agreement to which the United Kingdom is for the time being a party⁹, the power to make regulations is exercisable only where the Secretary of State, after the required consultation¹⁰, is satisfied as to the following matters¹¹:

- 1549 (a) that the proposed exercise of the power would be likely to result in an increase in the re-use, recovery or recycling of the products or materials in question¹²;
- 1550 (b) that any such increase would produce environmental or economic benefits¹³;
- 1551 (c) that those benefits are significant as against the likely costs resulting from the imposition of the proposed producer responsibility obligation¹⁴;
- 1552 (d) that the burdens imposed on businesses by the regulations are the minimum necessary to secure those benefits¹⁵; and
- 1553 (e) that those burdens are imposed on persons most able to make a contribution to the achievement of the relevant targets having regard to the desirability of acting fairly between persons who manufacture, process, distribute or supply products or materials¹⁶; and taking account of the need to ensure that the proposed producer responsibility obligation is so framed as to be effective in achieving the purposes for which it is to be imposed¹⁷.

The power to make regulations¹⁸ is also exercisable, in a case falling within head (1) or head (2) above, for the purpose of sustaining at least a minimum level of (rather than promoting or securing an increase in) re-use, recovery or recycling of products or materials¹⁹.

The Secretary of State has a duty to exercise the power to make regulations in the manner which he considers best calculated to secure that the exercise does not have the effect of restricting, distorting or preventing competition or, if it is likely to have any such effect, that the effect is no greater than is necessary for achieving the environmental or economic benefits mentioned in heads (a) to (e) above²⁰.

Regulations²¹ may, in particular, make provision for or with respect to:

- 1554 (i) the classes or descriptions of person to whom the producer responsibility obligation²² imposed by the regulations applies²³;
- 1555 (ii) the classes or descriptions of products or materials²⁴ in respect of which the obligation applies²⁵;
- 1556 (iii) the targets which are to be achieved with respect to the proportion (whether by weight, volume or otherwise) of the products or materials in question which are to be re-used, recovered or recycled, whether generally or in any prescribed way²⁶;
- 1557 (iv) particulars of the obligation imposed by the regulations²⁷;
- 1558 (v) the registration of persons who are subject to a producer responsibility obligation and who are not members of registered exemption schemes²⁸, the imposition of requirements in connection with such registration, the variation of such requirements, the making of applications for such registration, the period for which any such registration is to remain in force, and the cancellation of any such registration²⁹;
- 1559 (vi) the approval, or withdrawal of approval, of exemption schemes by the Secretary of State³⁰;
- 1560 (vii) the imposition of requirements on persons who are not members of registered exemption schemes to furnish certificates of compliance to the Environment Agency³¹;
- 1561 (viii) the approval of persons by the Environment Agency for the purpose of issuing certificates of compliance³²;
- 1562 (ix) the registration of exemption schemes, the imposition of conditions in connection with such registration, the variation of such conditions, the making of applications for such registration, and the period for which any such registration is to remain in force³³;
- 1563 (x) the requirements which must be fulfilled, and the criteria which must be met, before an exemption scheme may be registered³⁴;
- 1564 (xi) the powers of the Environment Agency in relation to applications received by it for registration of exemption schemes³⁵;
- 1565 (xii) the cancellation of the registration of an exemption scheme³⁶;
- 1566 (xiii) the fees³⁷, or the method of determining the fees, which are to be paid to the Environment Agency:

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- 130. (A) in respect of the approval of persons for the purpose of issuing certificates of compliance³⁸;
- 131. (B) on the making of an application for registration of an exemption scheme³⁹;
- 132. (C) in respect of the subsistence of the registration of that scheme⁴⁰;
- 133. (D) on submission to the Environment Agency of a certificate of compliance⁴¹;
- 134. (E) on the making of an application for, or for the renewal of, registration of a person required to register under the regulations⁴²;
- 135. (F) in respect of the renewal of the registration of that person⁴³;

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- 1567 (xiv) appeals against the refusal of registration, the imposition of conditions in connection with registration, or the cancellation of the registration, of any exemption scheme⁴⁴;
- 1568 (xv) the procedure on any such appeal⁴⁵;
- 1569 (xvi) cases, or classes of case:

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- 136. (A) in which an exemption scheme is, or is not, to be treated as registered⁴⁶; or
- 137. (B) in which a person is, or is not, to be treated as a member of a registered exemption scheme⁴⁷,

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1570 pending the determination or withdrawal of an appeal, and otherwise with respect to the position of persons and exemption schemes pending such determination or withdrawal⁴⁸;

1571 (xvii) the imposition on the Environment Agency of a duty to monitor compliance with any of the obligations imposed by the regulations⁴⁹;

1572 (xviii) the imposition on prescribed persons of duties to maintain records, and furnish to the Secretary of State or to the Environment Agency returns, in such form as may be prescribed of such information as may be prescribed for any purposes of, or for any purposes connected with, or related to, these provisions⁵⁰ or any regulations⁵¹;

1573 (xix) the imposition on the Environment Agency of a duty to maintain, and make available for inspection by the public, a register containing prescribed information relating to registered exemption schemes or persons required to register under the regulations⁵²;

1574 (xx) the powers of entry and inspection which are exercisable by a new agency for the purposes of its functions under the regulations⁵³.

Regulations may make different provision for different cases; without prejudice to the generality of this, they may impose different producer responsibility obligations in respect of different classes or descriptions of products or materials and for different classes or descriptions of person or exemption scheme; and they may include incidental, consequential, supplemental or transitional provision⁵⁴.

If it appears to the Secretary of State:

1575 (aa) that any action proposed to be taken by the operator⁵⁵ of a registered exemption scheme would be incompatible with any obligations of the United Kingdom under the Community treaties⁵⁶ or any international agreement to which the United Kingdom is for the time being a party⁵⁷; or

1576 (bb) that any action which the operator of such a scheme has power to take is required for the purpose of implementing any such obligations or agreement⁵⁸,

he may direct that operator not to take or, as the case may be, to take the action in question⁵⁹. Any direction under these provisions may include such incidental, consequential, supplemental or transitional provision as the Secretary of State considers necessary or expedient; and, on the application of the Secretary of State, is enforceable by injunction⁶⁰.

1 'Recovery', in relation to products or materials, includes: (1) composting, or any other form of transformation by biological processes, of products or materials; or (2) the obtaining, by any means, of energy from products or materials: Environment Act 1995 s 93(8).

2 'Product' and 'material' include a reference to any product or material (as the case may be) at a time when it becomes, or has become, waste: Environment Act 1995 s 93(8). Regulations may prescribe, in relation to prescribed products or materials, activities, or the activities, which are to be regarded for the purposes of ss 93-95 (see also PARA 649) or any regulations as re-use, recovery or recycling of those products or materials: s 93(8). 'Regulations' means regulations under s 93: s 93(8).

3 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 'Producer responsibility obligation' means the steps which are required to be taken by relevant persons of the classes or descriptions to which the regulations in question apply in order to secure attainment of the targets specified or described in the regulations: Environment Act 1995 s 93(8). 'Relevant persons', in the case of any regulations or any producer responsibility obligation, means persons of the class or description to which the producer responsibility obligation imposed by the regulations applies: s 93(8).

Environment Act 1995 s 93(1). 'Prescribed' means prescribed in regulations: s 93(8). The power to make regulations is exercisable by statutory instrument: s 93(9). A statutory instrument containing regulations is not to be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament (s 93(10)), but this does not apply to a statutory instrument by reason only that it contains regulations varying any relevant targets (s 93(11)). 'Relevant targets' means the targets specified or described in the regulations imposing the producer responsibility obligation in question: s 93(8). A statutory instrument which, by virtue of s 93(11), is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament is subject to annulment in pursuance of a resolution of either House of Parliament: s 93(12).

See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871 (amended by SI 2007/3538; SI 2008/413; and SI 2008/1941); and PARA 650. See also the End-of-Life Vehicles Regulations 2003, SI 2003/2635 (made under the European Communities Act 1972); and PARA 651.

Where a bottled drink is sold in a bar or club, the publican has responsibility, under the Producer Responsibility Obligations (Packaging Waste) Regulations 2005, SI 2005/3468 (which replace the Producer Responsibility Obligations (Packaging Waste) Regulations 1997, SI 1997/648 (revoked) but see now the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871), for the recovery and recycling of the bottle: *R (on the application of Valpak Ltd) v Environment Agency* [2002] EWHC 1510 (Admin), [2002] Env LR 36, [2002] All ER (D) 357 (May). As to the definition of packaging and plastic carrier bag see also Case C-341/01: *Plato Plastik Robert Frank GmbH v Caropack Handelsgesellschaft mbH* [2004] ECR I-4883, [2004] 3 CMLR 632, ECJ.

As to charges for single use carrier bags see PARA 653.

6 Environment Act 1995 s 93(2).

7 As to the meaning of 'United Kingdom' see PARA 1 note 2.

8 Environment Act 1995 s 93(3)(a).

9 Environment Act 1995 s 93(3)(b).

10 Ie such consultation as is required by the Environment Act 1995 s 93(2): see the text and note 6.

11 Environment Act 1995 s 93(3).

12 Environment Act 1995 s 93(6)(a).

13 Environment Act 1995 s 93(6)(b).

14 Environment Act 1995 s 93(6)(c).

15 Environment Act 1995 s 93(6)(d).

16 Environment Act 1995 s 93(6)(e)(i). Nothing in this provision is to be taken to prevent regulations imposing a producer responsibility obligation on any class or description of person to the exclusion of any others: s 93(6).

17 Environment Act 1995 s 93(6)(e)(ii).

18 Ie the powers conferred by the Environment Act 1995 s 93(1): see the text and note 5.

19 Environment Act 1995 s 93(4). In making regulations by virtue of s 93(3)(a) or (b) (see heads (1), (2) in the text), the Secretary of State must have regard to the matters specified in s 93(6) (see heads (a)-(e) in the text); and in its application in relation to the power conferred by virtue of s 93(4), s 93(6) has effect as if: (1) any reference to an increase in the re-use, recovery or recycling of products or materials were a reference to the sustaining of at least a minimum level of re-use, recovery or recycling of the products or materials in question; and (2) any reference to the production of environmental or economic benefits included a reference to the sustaining of at least a minimum level of any such existing benefits: s 93(5). Any reference in s 93 or s 94 to securing or achieving any such benefits accordingly includes a reference to sustaining at least a minimum level of any such existing benefits: see s 93(5).

20 Environment Act 1995 s 93(7).

21 As to the meaning of 'regulations' see note 2; definition applied by virtue of the Environment Act 1995 s 94(6). As to the regulations made see the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871; and PARA 650.

22 As to the meaning of 'producer responsibility obligation' see note 4; definition applied by virtue of the Environment Act 1995 s 94(6).

23 Environment Act 1995 s 94(1)(a).

24 As to the meanings of 'product' and 'material' see note 2; definitions applied by virtue of the Environment Act 1995 s 94(6).

25 Environment Act 1995 s 94(1)(b).

26 Environment Act 1995 s 94(1)(c). As to the meanings of 'recovery' and 'prescribed' see notes 1, 5; definitions applied by virtue of s 94(6).

27 Environment Act 1995 s 94(1)(d).

28 'Registered exemption scheme' means an exemption scheme which is registered pursuant to regulations: Environment Act 1995 s 94(6). 'Exemption scheme' means a scheme which is (or, if it were to be registered in accordance with the regulations, would be) a scheme whose members for the time being are, by virtue of the regulations and their membership of that scheme, exempt from the requirement to comply with the producer responsibility obligation imposed by the regulations: s 94(6).

29 Environment Act 1995 s 94(1)(e).

30 Environment Act 1995 s 94(1)(f).

31 Environment Act 1995 s 94(1)(g). The Environment Act 1995 refers to 'the appropriate agency', which, in relation to England and Wales, means (subject to regulations made by virtue of s 94(3): see note 37a) the Environment Agency: see s 94(6). As to the Environment Agency see PARA 68 et seq.

32 Environment Act 1995 s 94(1)(h). 'Certificate of compliance' means a certificate issued by a person approved for the purpose by the Environment Agency to the effect that that person is satisfied that the person in respect of whom the certificate is issued is complying with any producer responsibility obligation to which he is subject: s 94(6).

Persons issuing certificates of compliance must act in accordance with guidance issued for the purpose by the Environment Agency, which may include guidance as to matters which are, or are not, to be treated as evidence of compliance or as evidence of non-compliance: s 94(4).

33 Environment Act 1995 s 94(1)(j).

34 Environment Act 1995 s 94(1)(k).

35 Environment Act 1995 s 94(1)(l).

36 Environment Act 1995 s 94(1)(m).

37 In making any provision in relation to fees, regard must be had to the desirability of securing that the fees received by the Environment Agency under the regulations are sufficient to meet the costs and expenses incurred by the Agency in the performance of its functions under the regulations: see the Environment Act 1995 s 94(5). The Environment Act 1995 refers to a 'new agency', which means the Environment Agency or the Scottish Environment Protection Agency ('SEPA'): see s 94(6). See PARA 68.

Regulations may make provision as to which of the new agencies is the appropriate agency for the purposes of any function conferred or imposed by or under s 93 (see the text and notes 1-20) or s 94, or for the purposes of the exercise of that function in relation to the whole or a prescribed part of Great Britain, and may make provision for things done or omitted to be done by either new agency in relation to any part of Great Britain to be treated for prescribed purposes as done or omitted to be done by the other of them in relation to some other part of Great Britain: s 94(3). As to the regulations made see the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871; and PARA 650. As to the meaning of 'Great Britain' see PARA 1 note 2.

38 Environment Act 1995 s 94(1)(p)(i).

39 Environment Act 1995 s 94(1)(p)(ii).

40 Environment Act 1995 s 94(1)(p)(iii).

41 Environment Act 1995 s 94(1)(p)(iv).

42 Environment Act 1995 s 94(1)(p)(v).

43 Environment Act 1995 s 94(1)(p)(vi).

44 Environment Act 1995 s 94(1)(q).

45 Environment Act 1995 s 94(1)(r).

46 Environment Act 1995 s 94(1)(s)(i).

47 Environment Act 1995 s 94(1)(s)(ii).

48 Environment Act 1995 s 94(1)(s).

49 Environment Act 1995 s 94(1)(t).

50 le the Environment Act 1995 ss 93-95. See further PARA 649.

51 Environment Act 1995 s 94(1)(u).

52 Environment Act 1995 s 94(1)(w).

53 Environment Act 1995 s 94(1)(y).

54 Environment Act 1995 s 94(7).

55 'Operator', in relation to an exemption scheme, includes any person responsible for establishing, maintaining or managing the scheme: Environment Act 1995 s 94(6).

56 Environment Act 1995 s 94(2)(a)(i).

57 Environment Act 1995 s 94(2)(a)(ii).

58 Environment Act 1995 s 94(2)(b).

59 Environment Act 1995 s 94(2).

60 Environment Act 1995 s 94(8).

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649. Offences.

Regulations¹ may make provision for a person who contravenes a prescribed² requirement of the regulations to be guilty of an offence and liable to a penalty³.

Where an offence under any provision of the regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly⁴. Where the affairs of a body corporate are managed by its members, these provisions apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate⁵.

Where the commission by any person of an offence under the regulations is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of these provisions whether or not proceedings for the offence are taken against the first-mentioned person⁶.

¹ As to the meaning of 'regulations' see PARA 648 note 2; definition applied by virtue of the Environment Act 1995 s 95(5).

² As to the meaning of 'prescribed' see PARA 648 note 5; definition applied by virtue of the Environment Act 1995 s 95(5).

³ Environment Act 1995 s 95(1). The penalty which the regulations may impose on summary conviction is a fine not exceeding the statutory maximum, and on conviction on indictment is a fine: see s 95(1). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

As to the regulations that have been made see the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871; and PARAS 648 note 5, 650.

⁴ Environment Act 1995 s 95(2).

⁵ Environment Act 1995 s 95(3).

⁶ Environment Act 1995 s 95(4).

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650. Packaging waste.

The Producer Responsibility Obligations (Packaging Waste) Regulations 2007¹ impose on producers² the obligation to recover and recycle packaging waste³, and related obligations, in order for the United Kingdom⁴ to reach the recovery and recycling targets set out in European legislation⁵.

Part I⁶ of the Regulations contains various definitions⁷ and excludes charities from having producer responsibility obligations⁸.

Part II⁹ of the Regulations provides that where a producer satisfies the two threshold tests¹⁰, he will have producer responsibility obligations for that year¹¹. A producer is able to purchase packaging waste recovery notes ('PRNs') or packaging waste export recovery notes ('PERNs') or both as a means of satisfying his obligations personally¹². Alternatively he may join a compliance scheme, in which case he is registered with the Environment Agency and is exempt from complying with his producer responsibility obligations for that year¹³.

In Part III¹⁴ of the Regulations there are the requirements for registration of a producer or a scheme, the conditions that apply and the circumstances and means for cancellation of that registration. Producers who are not members of registered schemes need to be registered with the Agency¹⁵. There is certain information required from the producer in his application¹⁶. There are also various conditions for registration of a producer¹⁷. Once the Agency is satisfied that an application has been properly made (including payment of the required fee)¹⁸ the producer is registered with the Agency for the year. There is provision for cancellation of registration where a producer fails to meet the specified conditions, is subsequently found to have given false information on his application or where he joins a registered compliance scheme¹⁹. There are similar registration requirements for schemes²⁰.

Part IV²¹ of the Regulations sets out the requirements on producers and operators²² of schemes to keep records and furnish returns to the Agency²³. Producers must also provide certificates demonstrating compliance²⁴ with their recovery and recycling obligations²⁵.

Part V²⁶ of the Regulations sets out the procedure for applying for accreditation as a reprocessor²⁷ to issue PRNs or as an exporter²⁸ to issue PERNs²⁹.

The right of appeal against certain decisions of the Agency³⁰ are set out in Part VI³¹ of the Regulations. There are also provisions as to the procedure to be followed³², and on the status of the producer or scheme until the appeal is resolved³³.

Part VII³⁴ of the Regulations sets out the duties of the Agency to monitor compliance³⁵ and its duties in relation to keeping a public register³⁶. There are also provisions relating to the powers of the Agency to approve persons to issue certificates of compliance and of entry and inspection³⁷, and requiring the Agency to collate certain information on the common database and to pass this data on to the Secretary of State³⁸.

Part VIII³⁹ of the Regulations covers the application of the Regulations to groups of companies⁴⁰ and where two or more businesses are in relationships involving licenses of trade marks or pub-operating agreements⁴¹; and it also deals with how to apportion recovery and recycling obligations and other obligations in the context of mid-year changes⁴².

Part X⁴³ of the Regulations revokes earlier legislation and contains transitional provisions.

Part IX⁴⁴ of the Regulations makes it an offence: (1) to contravene the producer responsibility obligations to register, recover and recycle packaging waste and furnish a certificate of compliance to the Agency; or (2) to provide false or misleading information; or (3) to prevent the Agency from exercising its powers of entry and inspection.

1 Ie the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, made under the Environment Act ss 93-95: see PARAS 648, 649.

2 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 4, Sch 1.

3 As to the meaning of 'packaging waste' see the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 2. As to a publican's responsibility for the recovery and recycling of a bottle see *R (on the application of Valpak Ltd) v Environment Agency* [2002] EWHC 1510 (Admin), [2002] Env LR 36, [2002] All ER (D) 357 (May); and PARA 648 note 5.

4 As to the meaning of 'United Kingdom' see PARA 1 note 2.

5 Ie European Parliament and EC Council Directive 94/62 (OJ L365, 31.12.94, p 10) on packaging and waste: see PARA 39. See also the Packaging (Essential Requirements) Regulations 2003, SI 2003/1941; PARA 39; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 844 et seq.

6 Ie the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Pt I (regs 1-3).

7 In particular, certain terms (eg 'packaging', 'packaging waste', 'recovery', 'recycling' and 're-use') have the same meanings as in European Parliament and EC Council Directive 94/62 (OJ L365, 31.12.94, p 10): see PARA 39. See also PARA 648 note 1.

8 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 3. As to charities generally see **CHARITIES**. As to producer responsibility obligations see also PARA 648 notes 4, 22.

9 Ie the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Pt II (regs 4-5).

10 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Sch 1 para 3.

11 In general terms, the criteria are: to have a turnover of more than £2m (in the last financial year in respect of which audited accounts are available); and to have handled packaging or packaging materials (both as defined) weighing more than 50 tonnes in the previous year. As to qualification as a producer with producer responsibility obligations see the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Sch 1. As to rules for working out the level of a producer's recovery and recycling obligations see Sch 2 (amended by SI 2008/413).

12 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 4(5).

13 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 5. It is up to the scheme to meet recovery and recycling obligations and appropriate consumer information obligations that its members would otherwise have had. The regulations refer to 'an appropriate agency', which in relation to England and Wales, means the Environment Agency: see reg 2; and see also PARA 648 note 31. As to the Environment Agency see PARA 68 et seq.

14 Ie the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Pt III (regs 6-19).

15 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 6.

16 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 7. In particular, the applicant must supply the information set out in Sch 3 Pt I.

17 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 8. The conditions include compliance with the various obligations under the Regulations and providing required information, returns and plans.

18 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 9.

- 19 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 11.
- 20 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, regs 14-18. Before a compliance scheme can be registered, it must be approved by the appropriate authority: see reg 13.
- 21 Ie the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Pt IV (regs 20-22).
- 22 As to the meaning of 'operator' see PARA 648 note 55.
- 23 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, regs 20, 22.
- 24 See also PARA 648 note 32.
- 25 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 21, Sch 4.
- 26 Ie the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Pt V (regs 23-26).
- 27 'Reprocessor' means a person who, in the ordinary course of conduct of a trade, occupation or profession, carries out one or more activities of recovery or recycling: see the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 2.
- 28 'Exporter' means a person who, in the ordinary course of conduct of a trade, occupation or profession, owns and exports packaging waste for reprocessing outside the United Kingdom: see the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 2.
- 29 As to the procedure for applying see the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 24. As to the conditions applying to accreditation see reg 25, Sch 5 (Sch 5 amended by SI 2008/1941). As to the basis upon which accreditation may be suspended or cancelled see the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 26.
- 30 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 27.
- 31 Ie the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Pt VI (regs 27-30).
- 32 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 28, Sch 6.
- 33 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 30.
- 34 Ie the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Pt VII (regs 31-36).
- 35 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 31.
- 36 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 33, Sch 7.
- 37 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, regs 34-35.
- 38 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 36.
- 39 Ie the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Pt VIII (regs 37-39).
- 40 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 37, Sch 8.
- 41 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 38, Sch 9.

42 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 39, Sch 10.

43 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Pt X (reg 41).

44 See the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, Pt IX (reg 40).

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651. End-of-life vehicles.

The End-of-Life Vehicles Regulations 2003¹ partially implement European legislation² on end-of-life vehicles³. Part II⁴ of the Regulations provides for the application of the Regulations.

In Part III⁵ of the Regulations the design requirements for materials and components of vehicles put on the market are set out. Producers⁶ are required to ensure that materials and components of such vehicles do not contain lead, mercury, cadmium or hexavalent chromium apart from in those cases listed⁷. Following a request from the enforcement authority, a producer must submit technical documents showing compliance⁸. A producer must keep the technical documents for a period of four years from the date the materials and components are put on the market⁹. Enforcement of Part III is by a compliance notice procedure¹⁰, and there are offences for breach of the requirements¹¹.

Information requirements are contained in Part IV¹² of the Regulations. A producer must use material and component coding standards to facilitate the identification of those materials and components which are suitable for re-use and recovery¹³. After a request from the enforcement authority, the producer must submit information showing that material and coding standards have been used¹⁴. A producer is required to keep the information necessary to demonstrate compliance for a period of four years from the date the materials and components are put on the market¹⁵. A producer must provide the enforcement authority with dismantling information within six months after the date that each type of new vehicle is put on the market¹⁶, and a producer must publish information on the recoverability and recyclability of vehicles¹⁷. Enforcement is by a compliance notice procedure¹⁸, and there is provision for offences and penalties for breach of the requirements in Part IV¹⁹.

Part V²⁰ of the Regulations covers the certificate of destruction. When an end-of-life vehicle is transferred to it for treatment, an authorised treatment facility²¹ may issue a certificate to the last holder/owner of the end-of-life vehicle²². The authorised treatment facility is prohibited from imposing a charge on the last holder/owner for issuing the certificate²³. Where an end-of-life vehicle is transferred to an authorised treatment facility, the facility must notify the Secretary of State for Transport that a certificate has been issued²⁴.

1 Ie the End-of-Life Vehicles Regulations 2003, SI 2003/2635. See also the discussion on motor salvage at PARA 750 et seq.

2 Ie European Parliament and EC Council Directive 2000/53 (OJ No L 269, 21.10.2000, p 34) on end-of-life vehicles. See also PARAS 33, 39.

3 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2. An 'end-of-life vehicle' is any vehicle which is 'waste' as defined in EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) art 1 (ie any substance or object which the holder disposes of or is required to do so under national legislation) (but see also European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9)) (see PARA 33). 'Vehicle' means any vehicle designated as category M1 or N1 defined in EEC Council Directive 70/156 (OJ L42, 23.2.70, p 1) on the type-approval of motor vehicles and their trailers, Annex IIA and three wheel motor vehicles as defined in EEC Council Directive 92/61 (OJ L225, 10.8.92, p 72) relating to the type-approval of two or three wheel motor vehicles, but excluding motor tricycles: see the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2.

4 Ie the End-of-Life Vehicles Regulations 2003, SI 2003/2635, Pt II (regs 3-5) (regs 3, 5 amended by SI 2005/263; SI 2007/3538). In particular, note that the provisions of the End-of-Life Vehicles Regulations 2003, SI 2003/2635, do not apply to three-wheel motor vehicles and that the provisions of Pt VI (regs 37-43) cease to apply from 31 December 2006: see reg 3(4), (5) (as so added and amended). Note also that Pt VII (regs 44-50) is revoked by SI 2007/3538.

- 5 le the End-of-Life Vehicles Regulations 2003, SI 2003/2635, Pt III (regs 6-13).
 - 6 'Producer' means the vehicle manufacturer or the professional importer of a vehicle into a member state: End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2.
 - 7 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 6, Sch 1.
 - 8 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 7.
 - 9 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 8.
 - 10 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 9.
 - 11 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 10. As to penalties see reg 11. As to the defence of due diligence see reg 12. As to liability of persons other than the principal offender see reg 13.
 - 12 le the End-of-Life Vehicles Regulations 2003, SI 2003/2635, Pt IV (regs 14-26).
 - 13 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, regs 14, 15, Sch 2.
 - 14 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 16.
 - 15 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 17.
 - 16 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 18.
 - 17 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 19.
 - 18 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 21.
 - 19 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, regs 23, 24.
 - 20 le the End-of-Life Vehicles Regulations 2003, SI 2003/2635, Pt V (regs 27-36) (regs 29, 31 amended, and reg 29A added, by SI 2005/263).
 - 21 le any establishment or undertaking carrying out treatment operations which holds an environmental permit authorising those operations granted under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 13(1) (see PARA 664): see the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2 (definition substituted by SI 2007/3538).
 - 22 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 27. As to the form and content of the certificate see reg 29 (as amended: see note 20), reg 29A (as added: see note 20), Sch 3.
 - 23 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 28.
 - 24 See the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 34. As to the Secretary of State for Transport see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 509 et seq.
- Where the Secretary of State is notified that a certificate has been issued, he must not record any further change of keeper in the register: see reg 34. There are restrictions on the disclosure of information obtained from the vehicle register: see reg 36.

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652. Waste electrical and electronic equipment.

The Waste Electrical and Electronic Equipment Regulations 2006¹ have been made for the purposes of implementing in the United Kingdom² European Union legislation³ on waste electrical and electronic equipment.

Part 1⁴ of the Regulations deals with extent, interpretation and service of documents⁵. Part 2⁶ provides that the Regulations will apply, with certain exceptions, to the categories of EEE specified⁷.

Part 3⁸ of the 2006 Regulations provides that all producers who put EEE on the market in the United Kingdom in a compliance period will be responsible for financing the costs of the collection, treatment, recovery and environmentally sound disposal of (1) WEEE from private households that is deposited at designated collection facilities, or returned in that compliance period⁹; and (2) WEEE from users other than private households that arises during that compliance period¹⁰. Any producer who has any obligation¹¹ must join an approved compliance scheme; and he is exempt from complying with any such obligation for the period that his membership of that scheme subsists¹². There are rules for working out the level of a producer's financing obligation under that regulation¹³. A producer must provide a declaration of compliance, together with supporting evidence, to the appropriate authority¹⁴. A producer must mark EEE that he puts on the market with the relevant crossed-out wheeled bin symbol¹⁵, and a producer identification mark and a date mark¹⁶. A producer must also provide information on reuse and environmentally sound treatment for each new type of EEE put on the market by that producer¹⁷. There are certain obligations placed on producers supplying EEE to a member state other than the United Kingdom by means of distance communication¹⁸.

Part 4¹⁹ of the Regulations requires an operator of an approved compliance scheme to register or notify each producer who is a member of that scheme with the appropriate authority²⁰. An operator of a scheme has certain obligations in relation to the reuse of whole appliances²¹, treatment²² and recovery²³ for any WEEE for which he is responsible. Such an operator has obligations as to reporting²⁴, compliance²⁵ and record keeping²⁶.

Under Part 5²⁷ a distributor is responsible for providing an in-store take back service for customers in relation to specified WEEE unless he is a member of a distributor take back scheme²⁸. A distributor supplying new EEE must make specified information available to users of EEE in private households²⁹. A distributor has a right to return WEEE from private households free of charge to a system set up by a compliance scheme³⁰. There is a record-keeping obligation on distributors³¹.

Part 6³² of the 2006 Regulations places a financing obligation on users other than private households in relation to WEEE that arises from EEE that was put on the market in the United Kingdom before 13 August 2005³³. A person collecting or transporting WEEE must ensure that reuse and recycling of that equipment, or its components, is optimised³⁴. A person has a right to refuse to handle contaminated WEEE³⁵. An operator of a scheme may establish and operate a system to take back WEEE from private households³⁶. No person may show a purchaser at the time of sale of new EEE the costs of financing the collection, treatment and environmentally sound disposal of WEEE from private households unless specified conditions apply³⁷.

In Part 7³⁸ there is set out the procedure for applying for approval as a scheme³⁹. Provision is made for refusal of approval⁴⁰, conditions of approval⁴¹ and withdrawal of approval⁴². Part 8⁴³ of

the Regulations sets out the procedure for applying for approval as an authorised treatment facility ('ATF') or an exporter for the purpose of issuing evidence of producer or scheme compliance under the Regulations⁴⁴. Provision is made for conditions of approval⁴⁵ and suspension or cancellation of approval⁴⁶.

Under Part 9⁴⁷ the Secretary of State⁴⁸ has power to approve a distributor take back scheme⁴⁹ and designated collection facilities ('DCFs')⁵⁰. The Secretary of State has a power to approve a code of practice for the purpose of providing practical guidance to DCFs and operators of schemes⁵¹; and he also has a power to buy, sell or otherwise supply evidence notes issued by an approved ATF ('AATF') or an approved exporter; to issue evidence notes; and to approve the format of evidence notes issued by AATFs and approved exporters⁵². The Secretary of State has a duty to promote the design and production of EEE that takes into account and facilitates dismantling and recovery⁵³.

Part 10⁵⁴ of the Regulations provides that an appropriate authority is under a duty to maintain and make available a register of producers⁵⁵; and to monitor the performance of specified obligations of producers, operators of schemes, AATFs and approved exporters⁵⁶. There are duties imposed on an appropriate authority in relation to the approval of compliance schemes⁵⁷ and AATFs and approved exporters⁵⁸. An appropriate authority must publish information about EEE put on the market in the United Kingdom and WEEE deposited at DCFs⁵⁹.

In Part 11⁶⁰ provision is made for the disclosure of information by the Secretary of State, an appropriate authority and an enforcement authority to any person for the purpose of facilitating the carrying out of any function under the Regulations.

Part 12⁶¹ sets out the right and procedure of an appeal against certain decisions of an appropriate authority. Part 13⁶² of the Regulations covers enforcement⁶³. Finally Part 14⁶⁴ details the offences⁶⁵ and penalties⁶⁶ relating to any contravention of the 2006 Regulations.

1 Ie the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289.

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 Ie European Parliament and EC Council Directive 2002/96 (OJ L37, 13.2.2003, p 24) on waste electrical and electronic equipment (WEEE). As to Directive 2002/96 see PARA 33.

4 Ie the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 1 (regs 1-4) (reg 2 amended by SI 2007/3454; SI 2007/3538; and SI 2009/2957).

5 In particular, the following terms used have the same meaning as in European Parliament and EC Council Directive 2002/96 (OJ L37, 13.2.2003, p 24): eg 'dangerous substance or preparation', 'disposal', 'distributor', 'electrical and electronic equipment' ('EEE'), 'producer', 'recovery', 'recycling', 'reuse', 'treatment', 'waste electrical and electronic equipment' ('WEEE') and 'WEEE from private households': see the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 2 (as amended: see note 4).

6 Ie the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 2 (regs 5-7).

7 Ie specified in the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Sch 1. The products listed in Sch 2 fall within the categories set out in Sch 1.

8 Ie the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 3 (regs 8-18) (reg 8 amended by SI 2007/3454; and SI 2009/2957; and the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 10 amended by SI 2009/2957).

9 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 8 (as amended: see note 8).

10 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 9.

11 Ie under the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, regs 8, 9.

12 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 10 (as amended: see note 8).

- 13 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 8 (as amended: see note 8).
- 14 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 12. For most purposes for England and Wales the 'appropriate authority' is the Environment Agency see reg 2. As to the Environment Agency see PARA 68 et seq. As to the information that must be included in a declaration of compliance see Sch 5.
- 15 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 15, Sch 4.
- 16 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 16.
- 17 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 17.
- 18 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 18.
- 19 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 4 (regs 19-30) (regs 20, 22, 24, 27, 28, 29 amended by SI 2007/3454; and the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, regs 20, 22, 26-29 also amended by SI 2009/2957).
- 20 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, regs 19, 21. As to the procedure for registering producers see reg 20, Sch 6 (as amended: see note 19).
- 21 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 24 (as amended: see note 19).
- 22 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 25.
- 23 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 26.
- 24 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, regs 27, 28 (as amended: see note 19).
- 25 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 29 (as amended: see note 19).
- 26 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 30.
- 27 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 5 (regs 31-35) (regs 33, 34 amended by SI 2009/2957; and the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 34 amended by SI 2007/3454).
- 28 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, regs 31, 35.
- 29 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 33.
- 30 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 32.
- 31 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 34 (as amended: see note 27). See also reg 59A (added by SI 2007/3454) as to the relevant format.
- 32 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 6 (regs 36-40A) (reg 40A added by SI 2007/3454).
- 33 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 36.
- 34 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 37.
- 35 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 38.
- 36 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 39. As to final holder right of return see reg 40A (as added: see note 32).
- 37 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 40.
- 38 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 7 (regs 41-45) (regs 41, 43, 44 amended by SI 2007/3454; and the Waste Electrical and Electronic Equipment Regulations 2006, SI

2006/3289, regs 41, 43 amended by SI 2009/2957). The charges that must be paid to the Environment Agency are specified: see the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 45.

39 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 41, Sch 7 (Sch 7 amended by SI 2007/3454; and SI 2009/2957).

40 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 42.

41 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 43 (as amended: see note 38).

42 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 44 (as amended: see note 38).

43 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 8 (regs 46-53) (regs 46, 47, 48, 50, 52 amended by SI 2007/3454; and the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, regs 46, 47, 52 amended by SI 2009/2957). The charges that must be paid to the Environment Agency are specified: see the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 51.

44 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, regs 46-48, Sch 8 (as amended (see note 43); and Sch 8 amended by SI 2009/2957).

45 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 49.

46 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 50 (as amended: see note 43).

47 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 9 (regs 54-59) (reg 58 amended by SI 2007/3454; and SI 2009/2957). See note 31.

48 As to the Secretary of State see PARA 58.

49 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 54.

50 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, regs 55, 56, Sch 9 (Sch 9 amended by SI 2007/3454).

51 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 57.

52 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 58 (as amended: see note 47).

53 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 59.

54 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 10 (regs 60-64) (regs 61, 63 amended by SI 2007/3454).

55 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 60, Sch 10 (Sch 10 amended by SI 2007/3454).

56 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 61 (as amended: see note 54).

57 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 62.

58 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 64.

59 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 63 (as amended: see note 54).

60 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 11 (reg 65).

61 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 12 (regs 66-69) (reg 69 amended by SI 2007/3454). See also the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Sch 11 (amended by SI 2007/3454).

62 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 13 (regs 70-72) (amended by SI 2007/3454).

63 The Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, regs 8-13, 18, 37, 43, 46, 49, 52 and 53 and Pt 4 are enforced in England and Wales by the Environment Agency; and the remainder of the regulations are enforced by the Secretary of State: see reg 70 (as amended: see note 62). These enforcement authorities have powers to serve enforcement notices (see reg 71 (as so amended)) and to enter and inspect premises (see reg 72 (as so amended)).

64 In the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, Pt 14 (regs 73-75) (regs 73, 74 amended by SI 2007/3454).

65 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 73 (as amended: see note 64).

66 See the Waste Electrical and Electronic Equipment Regulations 2006, SI 2006/3289, reg 74 (as amended: see note 64).

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653. Charges for single-use carrier bags.

The relevant national authority¹ may make provision by regulations² about charging by sellers³ of goods for the supply of single use carrier bags⁴. The regulations may make provision for such regulations⁵ to apply (1) to all sellers of goods; (2) to sellers of goods named in the regulations; (3) to sellers of goods identified by reference to specified factors⁶; or (4) to sellers of goods within head (2) above and sellers of goods within head (3) above⁷. The regulations may make provision requiring sellers of goods to charge for single use carrier bags supplied at the place where the goods are sold, for the purpose of enabling the goods to be taken away, or for the purpose of enabling the goods to be delivered⁸. The regulations may specify the minimum amount that a seller must charge for each single use carrier bag, or provide for that amount to be determined in accordance with the regulations⁹. The regulations may appoint a person (an 'administrator') to administer provision made by the regulations¹⁰. The regulations may confer or impose powers or duties on an administrator to enforce provision made by the regulations¹¹.

The relevant national authority may make provision by regulations about civil sanctions¹² for breaches of the regulations¹³. The regulations may make provision conferring on an administrator the power by notice to impose one or more discretionary requirements¹⁴ on a person who breaches the regulations¹⁵.

Such provision¹⁶ may include provision for an administrator by notice, to require a person on whom a discretionary requirement is imposed to pay the costs¹⁷ incurred by the administrator in relation to the imposition of the discretionary requirement up to the time of its imposition¹⁸. The regulations may not provide for the making of an appeal other than to the First-tier Tribunal, or another tribunal created under an enactment¹⁹. The regulations may make provision enabling an administrator to give a publicity notice to a person on whom a civil sanction has been imposed in accordance with the regulations²⁰. There is also power in the regulations to make provision regarding liability of the officers of a body corporate and the partners of a partnership²¹. Further provision is made with regard to guidance as to the use of civil sanctions²²; publication of enforcement action²³; compliance of the administrator with regulatory principles²⁴; review of the operation of any provision made by the authority conferring power on an administrator to impose a civil sanction²⁵; suspension of power to serve any further notice of intent²⁶; and payment of penalties into the Consolidated Fund²⁷.

1 'Relevant national authority' means the Secretary of State (see PARA 58) in relation to England or the Welsh Ministers (see PARA 59) in relation to Wales: see the Climate Change Act 2008 s 77(3). As to s 77, Sch 6 see also **FUEL AND ENERGY**.

2 Regulations under the Climate Change Act 2008 s 77, Sch 6 are subject to affirmative resolution procedure if (1) they are the first regulations to be made by the relevant nation authority in question under Sch 6; (2) they contain provision imposing or providing for the imposition of new civil sanctions; (3) they increase the amount or maximum amount of a monetary penalty or change the basis on which such an amount or maximum is to be determined; or (4) they amend or repeal a provision of an enactment contained in primary legislation: s 77(4). Otherwise regulations under Sch 6 are subject to negative resolution procedure: s 77(5). Where an instrument containing regulations under the Sch 6 made by a single national authority contains regulations that are to be made by the Secretary of State and are subject to affirmative resolution procedure, the regulations must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament: see Sch 6 para 27. In relation to an instrument containing regulations under Schedule 6 made or to be made by the Secretary of State and the Welsh Ministers, if any of the regulations are subject to affirmative resolution procedure, all of them are subject to that procedure: see Sch 6 para 28. If a draft of an instrument containing regulations under Schedule 6 would, apart from Sch 6 para 29, be

treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument: Sch 6 para 29. At the date at which this volume states the law no regulations had been made under s 77, Sch 6.

3 'Seller', in relation to goods, has the meaning given by the regulations which may define that term by reference, in particular, to a person's involvement in selling the goods, a person's interest in the goods, or a person's interest in the place at or from which the goods are sold, or any combination of those factors: Climate Change Act 2008 Sch 6 para 3(1).

4 Climate Change Act 2008 Sch 6 para 1. 'Single use carrier bag' has the meaning given by the regulations, which may define that term by reference, in particular, to a bag's size, thickness, construction, composition or other characteristics, or its intended use, or any combination of those factors: Sch 6 para 5.

5 ie regulations under the Climate Change Act 2008 Sch 6.

6 The specified factors may include the place or places at or from which a seller supplies goods, the type of goods that a seller supplies, the value of goods that a seller supplies and a seller's turnover or any part of that turnover: see the Climate Change Act 2008 Sch 6 para 3(3). In Sch 6 'specified' means specified in regulations under Sch 6: Sch 6 para 3(4).

7 Climate Change Act 2008 Sch 6 para 3(2).

8 Climate Change Act 2008 Sch 6 para 2.

9 Climate Change Act 2008 Sch 6 para 4.

10 See the Climate Change Act 2008 Sch 6 para 6. More than one person may be appointed as administrator: Sch 6 para 6(2). As to record-keeping and publication of records relating to charges made for single use carrier bags see Sch 6 para 7.

11 See the Climate Change Act 2008 Sch 6 para 8.

12 In the Climate Change Act 2008 Sch 6 'civil sanction' means a fixed monetary penalty or a discretionary requirement: Sch 6 para 9(3). The regulations may make provision conferring on an administrator the power by notice to impose a fixed monetary penalty on a person who breaches regulations under Sch 6: Sch 6 para 10(1). The regulations may only confer such a power in relation to a case where the administrator is satisfied on the balance of probabilities that the breach has occurred: Sch 6 para 10(2). For the purposes of Sch 6 a 'fixed monetary penalty' is a requirement to pay to an administrator a penalty of an amount specified in or determined in accordance with the regulations: Sch 6 para 10(3). The regulations may not provide for the imposition of a fixed monetary penalty in excess of £5,000: Sch 6 para 10(4). As to procedure in relation to fixed monetary penalties see Sch 6 para 11. Provision may not be made under Sch 6 para 10 or Sch 6 para 12 (see the text and notes 14, 15) conferring powers on an administrator in relation to the same kind of breach of regulations under Sch 6 unless it complies with certain requirements: see Sch 6 para 15.

13 Climate Change Act 2008 Sch 6 para 9(1). For the purposes of Sch 6, a person breaches regulations under Sch 6 if, in such circumstances as may be specified, the person fails to comply with a requirement made by or under the regulations or obstructs or fails to assist an administrator: Sch 6 para 9(2).

14 'Discretionary requirement' means a requirement to pay a monetary penalty to an administrator of such amount as the administrator ('variable monetary penalty'), or a requirement to take such steps as an administrator may specify, within such period as the administrator may specify, to secure that the breach does not continue or recur ('non-monetary discretionary requirement'): see Sch 6 para 12(3). As to procedure with regard to discretionary requirements see Sch 6 para 13. As to the enforcement of discretionary requirements see Sch 6 para 14. See also Sch 6 para 15; and note 12.

15 See the Climate Change Act 2008 Sch 6 para 12(1). See also Sch 6 para 15; and note 12.

As to provision for early payment discounts, the payment of interest or other financial penalties for late payment of the monetary penalty and enforcement of the penalty, see Sch 6 para 16.

16 ie under the Climate Change Act 2008 Sch 6 para 12.

17 Such costs include in particular investigation costs, administration costs and costs of obtaining expert advice, including legal advice: see the Climate Change Act 2008 Sch 6 para 17(2).

18 See the Climate Change Act 2008 Sch 6 para 17(1).

19 See the Climate Change Act 2008 Sch 6 para 18. As to the First-tier Tribunal see **ADMINISTRATIVE LAW**. The reference to 'tribunal' does not include an ordinary court of law: Sch 6 para 18(2).

- 20 See the Climate Change Act 2008 Sch 6 para 19.
- 21 See the Climate Change Act 2008 Sch 6 para 20.
- 22 See the Climate Change Act 2008 Sch 6 para 21.
- 23 See the Climate Change Act 2008 Sch 6 para 22.
- 24 See the Climate Change Act 2008 Sch 6 para 23.
- 25 See the Climate Change Act 2008 Sch 6 para 24.
- 26 See the Climate Change Act 2008 Sch 6 para 25.
- 27 See the Climate Change Act 2008 Sch 6 para 26.

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(vi) Site Waste

654. Site waste management plans.

The appropriate person¹ may by regulations² make provision requiring persons of a specified³ description: (1) to prepare plans for the management and disposal of waste created in the course of specified descriptions of works involving construction or demolition⁴; (2) to comply with such plans⁵.

Such regulations may make supplementary and incidental provision, including in particular provision as to:

- 1577 (a) the circumstances in which plans must be prepared⁶;
- 1578 (b) the contents of plans⁷;
- 1579 (c) enforcement authorities in relation to plans and the powers of such authorities⁸;
- 1580 (d) the keeping of plans and their production to enforcement authorities⁹;
- 1581 (e) offences in relation to a failure to comply with a requirement under the regulations¹⁰;
- 1582 (f) penalties for those offences¹¹;
- 1583 (g) the discharging of liability for an offence under the regulations by the payment of a fixed penalty to an enforcement authority¹²;
- 1584 (h) the uses to which such payments may be put by enforcement authorities¹³.

1 For these purposes, 'appropriate person' means: (1) in relation to works in England, the Secretary of State; (2) in relation to works in Wales, the Welsh Ministers: see the Clean Neighbourhoods and Environment Act 2005 s 54(9). As to the Secretary of State see PARA 58. As to the Welsh Ministers see PARA 59.

2 Regulations under the Clean Neighbourhoods and Environment Act 2005 s 54 may make different provision for different purposes: s 54(4). They are to be made by statutory instrument: s 54(6). A statutory instrument containing regulations made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament: s 54(7). As to regulations made see the Site Waste Management Plans Regulations 2008, SI 2008/314. As to citation, application and commencement see reg 1; as to interpretation see reg 2; as to exemptions see reg 3; as to appointment of the principal contractor see reg 4; as to preparation of a site waste management plan see reg 5; as to requirements for a site waste management plan see reg 6; as to updating a site waste management plans for a project of £500,000 or less see reg 7; as to updating a site waste management plan for a project worth more than £500,000 see reg 8; as to availability of the plan see reg 9; as to keeping plans see reg 10; as to additional duties see reg 11, Schedule; as to false statements see reg 12; as to obstruction see reg 13; as to penalties see reg 14; as to enforcement see reg 15; as to fixed penalty notices see reg 16; and as to transitional provisions see reg 17.

3 I.e. specified in regulations under the Clean Neighbourhoods and Environment Act 2005 s 54 (see note 2): see s 54(9).

4 Clean Neighbourhoods and Environment Act 2005 s 54(1)(a). Descriptions of works that may be specified under s 54(1)(a) include, in particular, description by reference to the cost or likely cost of such works: s 54(2).

5 Clean Neighbourhoods and Environment Act 2005 s 54(1)(b).

6 Clean Neighbourhoods and Environment Act 2005 s 54(3)(a). See note 2.

7 Clean Neighbourhoods and Environment Act 2005 s 54(3)(b). See note 2.

8 Clean Neighbourhoods and Environment Act 2005 s 54(3)(c). The appropriate person may give guidance to persons who are enforcement authorities under s 54(3)(c) in relation to the powers conferred on them under that provision: s 54(8). See note 2.

9 Clean Neighbourhoods and Environment Act 2005 s 54(3)(d). See note 2.

10 Clean Neighbourhoods and Environment Act 2005 s 54(3)(e). See note 2.

11 Clean Neighbourhoods and Environment Act 2005 s 54(3)(f). See note 2.

12 Clean Neighbourhoods and Environment Act 2005 s 54(3)(g). See note 2.

13 Clean Neighbourhoods and Environment Act 2005 s 54(3)(h). Regulations making provision under s 54(3)(h) may, in particular, make different provision relating to different enforcement authorities or different descriptions of enforcement authority (including provision framed by reference to performance categories under the Local Government Act 2003 s 99(4): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 789): Clean Neighbourhoods and Environment Act 2005 s 54(5). See note 2.

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(3) UNAUTHORISED OR HARMFUL DEPOSITING, TREATMENT OR DISPOSAL OF WASTE

655. Prohibition on unauthorised or harmful depositing, treatment or disposal etc of waste.

A person must not:

- 1585 (1) deposit¹ controlled waste² or extractive waste³, or knowingly cause or knowingly permit⁴ controlled waste or extractive waste to be deposited in or on any land⁵ unless an environmental permit⁶ authorising the deposit is in force and the deposit is in accordance with the permit⁷;
- 1586 (2) submit controlled waste, or knowingly cause or knowingly permit controlled waste to be submitted, to any listed operation (other than an operation within head (1) above) that: (a) is carried out in or on any land, or by means of any mobile plant⁸; and (b) is not carried out under and in accordance with an environmental permit⁹;
- 1587 (3) treat, keep or dispose¹⁰ of controlled waste or extractive waste in a manner likely to cause pollution of the environment¹¹ or harm to human health¹².

Heads (1) and (2) above do not apply in relation to a waste operation that is an exempt waste operation¹³. Heads (1) to (3) above¹⁴ do not apply in relation to the carrying on of any of certain activities¹⁵.

Heads (1) and (2) above also do not apply in relation to household waste¹⁶ from a domestic property which is treated, kept or disposed of within the curtilage of the property¹⁷; nor do heads (1) to (3) above apply in cases prescribed in regulations made by the Secretary of State¹⁸.

A person who contravenes head (1), (2) or (3) above commits an offence¹⁹. It is a defence for a person charged with an offence under these provisions to prove:

- 1588 (i) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence²⁰; or
- 1589 (ii) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where: (A) he took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and (B) particulars of the acts were furnished to the waste regulation authority²¹ as soon as reasonably practicable after they were done²².

1 'Deposit' includes temporary deposit (see *R v Metropolitan Stipendiary Magistrate, ex p London Waste Regulation Authority* [1993] 3 All ER 113, DC; *R v Leighton and Town and Country Refuse Collections Ltd* [1997] Env LR 411, CA; cf *Leigh Land Reclamation Ltd v Walsall Metropolitan Borough Council* [1991] JPL 867), and may include continuing activities where appropriate (see *Thames Waste Management Ltd v Surrey County Council* [1997] Env LR 148). See also *Scott v Westminster City Council* (1995) 93 LGR 370, CA.

2 As to the meaning of 'controlled waste' see PARA 624. See *Environment Agency v Inglenorth Ltd* [2009] EWHC 670 (Admin), [2009] LLR 389, [2009] All ER (D) 167 (Mar); and PARA 624.

3 As to the meaning of 'extractive waste' see PARA 663 note 1; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538; and amended by SI 2009/1799).

4 Causation should be approached using common sense: see *Alphacell Ltd v Woodward* [1972] AC 824, [1972] 2 All ER 475, HL; *National Rivers Authority v Yorkshire Water Services Ltd* [1995] 1 AC 444, [1995] 1 All ER 225, HL. As to the meaning of 'knowingly' see *Westminster City Council v Croyalgrange Ltd* [1986] 2 All ER 353, [1986] 1 WLR 674, HL (decided under local government legislation). See also *Shanks and McEwan (Teesside) Ltd v Environment Agency* [1999] QB 333, [1997] 2 All ER 332, DC. As to the meaning of 'permitting' see *Vehicle Inspectorate v Nuttall (t/a Redline Coaches)* [1999] 1 WLR 629, [1999] RTR 264, HL. See also *Tophams Ltd v Earl of Sefton* [1967] 1 AC 50, [1966] 1 All ER 1039, HL; *Kent County Council v Beaney* [1993] Env LR 380.

As to the approach to causation under the Water Resources Act 1991 see *Environment Agency (formerly National Rivers Authority) v Empress Car Co (Abertillery) Ltd* [1999] 2 AC 22, sub nom *Empress Car Co (Abertillery) Ltd v National Rivers Authority* [1998] 1 All ER 481, HL. In this case, it was held that a person caused a pollutant to enter controlled waters within the meaning of the Water Resources Act 1991 s 85(1) (see PARA 291) if he actively did something, with or without the occurrence of other factors, which produced a situation in which the polluting matter could escape, even though what he did was not the immediate cause of the pollution. Where a necessary condition of the actual escape which happened was also the act of a third party or a natural event, the justices should consider whether that act or event should be regarded as a normal fact of life or something extraordinary. If it was an ordinary occurrence, it would not negative the causal effect of the defendant's acts, even if it was not foreseeable that it would happen to that particular defendant, or take that particular form; however, if it could be regarded as something extraordinary, it would be open to the justices to hold that the defendant did not cause the pollution. Whether an act or event was ordinary or extraordinary was one of fact and degree to which the justices should apply its common sense and knowledge of what happened in the area.

As to pollution of water see PARA 270 et seq.

Evidence of ownership of a vehicle is sufficient to establish a prima facie case that the owner is in control of, or in a position to control the use of, a vehicle which deposits controlled waste in contravention of the Environmental Protection Act 1990 s 33(1)(a): *Environment Agency v Melland* [2002] EWHC 904 (Admin), [2002] RTR 425, [2002] Env LR 29.

5 As to the meaning of 'land' see PARA 620 note 2.

6 As to the meaning of 'environmental permit' see PARA 664; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538).

7 Environmental Protection Act 1990 s 33(1)(a) (amended by SI 2007/3538; and SI 2009/1799). See also note 12. Where controlled waste is carried in and deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle is, for the purposes of the Environmental Protection Act 1990 s 33(1)(a), treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done: s 33(5). For the purposes of s 33(1)(a), the deposit of waste in or on land includes any listed operation involving such a deposit: s 33(11) (s 33(11)-(13) added by SI 2007/3538). For the purposes of the Environmental Protection Act 1990 s 33, a 'listed operation' is an operation listed in European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) on waste Annex IIA or Annex IIB: Environmental Protection Act 1990 s 33(13) (as so added). As to Directive 2006/12 see PARA 33.

See further, in relation to the disapplication of the Environmental Protection Act 1990 s 33(1)(a) above, in so far as it relates to an operation which falls within a description in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 3A, Pt 2 (Sch 3A added by SI 2009/3381) and meets the conditions specified in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 3A, Pt 2 for an operation of that description, the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 68(1) (reg 68 substituted by SI 2009/3381); and see also the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 68(3) (as so substituted), Sch 20 (amended by SI 2009/1799). See also PARA 663 note 1. As to the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, generally see PARA 662 et seq.

See *Shanks and McEwan (Teesside) Ltd v Environment Agency* [1999] QB 333, [1997] 2 All ER 332, DC (a company would be guilty of an offence under the Environmental Protection Act 1990 s 33(1)(a) (in fact an earlier version of this provision before environmental permits replaced waste management licences: see PARA 662) if it had knowledge of controlled waste being caused or permitted to be deposited in or on its land; it is not additionally necessary to prove that the company had knowingly permitted the alleged breach of the conditions of a waste management licence or that it had knowledge of the particular deposit of waste or of the container into which that waste was deposited; s 33(1)(a) only requires knowledge of the fact of deposit and not of the

breach of conditions). See also *Ashcroft v Cambro Waste Products Ltd* [1981] 3 All ER 699, [1981] 1 WLR 1349, DC; *Environment Agency v Singer* [1998] Env LR 380; *Environment Agency v ME Foley Contractors Ltd* [2002] EWHC 258 (Admin), [2002] 1 WLR 1754, [2002] Env LR 27; and see note 18. As to the interpretation of what is an exempt activity see *Environment Agency v Armstrong Environmental Services Ltd* [2005] EWHC 633 (Admin), [2005] Env LR 40, [2005] All ER (D) 373 (Mar).

As to investigation and enforcement costs see the Environmental Protection Act 1990 s 33A; and PARA 656. As to clean-up costs see s 33B; and PARA 657. As to forfeiture of vehicles see s 33C; and PARA 658. As to powers of seizure where there is a belief that a vehicle has been, is being or is about to be used in the commission of an offence under s 33 or s 34 see ss 34B, 34C; and PARA 659.

8 Environmental Protection Act 1990 s 33(1)(b)(i) (s 33(1)(b) substituted by SI 2007/3538). 'Mobile plant' means plant which is designed to move or be moved whether on roads or other land: Environmental Protection Act 1990 s 29(1), (9) (s 29(9) amended by SI 2007/3538).

9 Environmental Protection Act 1990 s 33(1)(b)(ii) (as substituted: see note 8).

10 For the purposes of the Environmental Protection Act 1990 s 33(1)(c) (see head (3) in the text), treating, keeping or disposing of controlled waste includes submitting it to any listed operation: s 33(12) (as added: see note 7). Generally as to the meaning of 'disposal' see PARA 620 note 12; and as to the treatment of waste see PARA 620 note 12. As to waste producers see *Gotech Industrial and Environmental Services Ltd v Friel* 1995 SCCR 22 (decided under earlier legislation). As to keeping waste see *R v Leighton and Town and Country Refuse Collection Ltd* [1997] Env LR 411. See also *Dudley v Holland* [1965] 1 QB 31, [1963] 3 All ER 732, DC.

11 'Pollution of the environment' means pollution of the environment due to the release or escape (into any environmental medium) from: (1) the land on which controlled waste or extractive waste is treated; (2) the land on which controlled waste or extractive waste is kept; (3) the land in or on which controlled waste or extractive waste is deposited; (4) fixed plant by means of which controlled waste or extractive waste is treated, kept or disposed of, of substances or articles constituting or resulting from the waste and capable (by reason of the quantity or concentrations involved) of causing harm to man or any other living organisms supported by the environment: Environmental Protection Act 1990 s 29(1), (3) (s 29(3) amended by SI 2009/1799). As to the meaning of 'environment' see PARA 627 note 2. As to the meaning of 'substance' see PARA 623 note 2.

The Environmental Protection Act 1990 s 29(3) applies in relation to mobile plant by means of which controlled waste or extractive waste is treated or disposed of as it applies to plant on land by means of which controlled waste or extractive waste is treated or disposed of: s 29(1), (4) (s 29(4) amended by SI 2009/1799).

For the purposes of the Environmental Protection Act 1990 s 29(3), (4), 'harm' means harm to the health of living organisms or other interference with the ecological systems of which they form part and in the case of man includes offence to any of his senses or harm to his property; and 'harmless' has a corresponding meaning: s 29(1), (5).

12 Environmental Protection Act 1990 s 33(1)(c) (amended by SI 2009/1799). See also the Environmental Protection Act 1990 s 33(12); and note 10. The provisions of s 33(1)(a)-(c) (in fact an earlier version of these provisions) create different offences, each of which may be committed by any one of the different acts specified: see *R v Leighton and Town and Country Refuse Collections Ltd* [1997] Env LR 411, CA (where it was held that, in principle, it is permissible to charge a single offence stating various acts of commission in the alternative). See also *Neal Soil Suppliers Ltd v Environment Agency for Wales* [2007] EWHC 2592 (Admin), [2007] All ER (D) 472 (Oct); and PARA 702.

As to liability for damage caused by waste see PARA 660.

13 Environmental Protection Act 1990 s 33(1A) (s 33(1A), (1B) added by SI 2007/3538). As to the meaning of 'exempt waste operation' see PARA 663 note 1; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538).

14 I.e. the Environmental Protection Act 1990 s 33(1).

15 Environmental Protection Act 1990 s 33(1B) (as added: see note 13). The activities referred to are: (1) the disposal of liquid waste under a consent under the Water Resources Act 1991 Pt III Ch II (ss 85-91) (see PARA 291 et seq); (2) a waste operation which is or forms part of an operation which (a) is the subject of a licence under the Food and Environment Protection Act 1985 Pt II (ss 5-15) (see PARA 525 et seq); or (b) by virtue of an order under s 7 (see PARA 527), does not require such a licence; (3) the disposal of agricultural waste in or on land under an authorisation under the Groundwater Regulations 1998, SI 1998/2746, reg 18 (revoked) (see now the Groundwater (England and Wales) Regulations 2009, SI 2009/2902; and PARA 335): Environmental Protection Act 1990 s 33(1B) (as so added).

16 As to the meaning of 'household waste' see PARA 624.

17 Environmental Protection Act 1990 s 33(2) (s 33(2) substituted, and s 33(2A) added, by SI 2006/937). However, the Environmental Protection Act 1990 s 33(2) does not apply to the treatment, keeping or disposal of household waste by an establishment or undertaking: s 33(2A) (as so added).

18 Environmental Protection Act 1990 s 33(3). The regulations may make different exceptions for different areas: see s 33(3). The Secretary of State, in exercising his power under s 33(3), must have regard in particular to the expediency of excluding from the prohibitions in s 33(1) (see heads (1)-(3) in the text): (1) any deposits which are small enough or of such a temporary nature that they may be so excluded; (2) any means of treatment or disposal which are innocuous enough to be so excluded; (3) cases for which adequate controls are provided by another enactment than s 33: s 33(4) (amended by SI 2007/3538). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the regulations made see the Waste Management Licensing Regulations 1994, SI 1994/1056 (see PARA 661) but they are now mostly replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 662 et seq). See also the Controlled Waste Regulations 1992, SI 1992/588 (see PARA 624); and the Waste Management (England and Wales) Regulations 2006, SI 2006/937 (see also PARAS 624, 709).

Whether a particular exemption applies is primarily a question of fact: see *North Yorkshire County Council v Boyne* [1997] JPL 434, [1997] Env LR 91. See also *Environment Agency v Armstrong Environmental Services Ltd* [2005] EWHC 633 (Admin), [2005] Env LR 40, [2005] All ER (D) 373 (Mar).

As to cases under the previous waste management licensing provisions see *London Waste Regulation Authority v Drinkwater Sabey Ltd* [1997] Env LR 137 (exempt activities are completely outside normal waste management licensing provisions, and prosecutions under the Environmental Protection Act 1990 s 33(6) (see the text and note 19) can only relate to activities for which a licence is required); *Environment Agency v R Newcomb & Sons Ltd* [2002] EWHC 2095 (Admin), [2002] All ER (D) 226 (Oct) (exemptions in the Waste Management Licensing Regulations 1994, SI 1994/1056, allow no margin of tolerance).

19 Environmental Protection Act 1990 s 33(6) (amended by SI 2007/3538). An offence can be committed only by the person who actually contravenes the condition of a licence, which in some circumstances may mean the occupier and not the licence holder: see *Shanks & McEwen (Midlands) Ltd v Wrexham Maelor Borough Council* [1996] Env LR D26 (this case was decided before waste management licences were replaced by environmental permits and the amendment to the Environmental Protection Act 1990 s 33(6)).

Where a person is charged with an offence under s 33(1)(a) (see head (1) in the text) (in fact again an earlier version of the provision), the court should consider whether an exemption is in play, and then examine the issues of fact in each case, before deciding whether the burden of proof is on the defendant: *Environment Agency v ME Foley Contractors Ltd* [2002] EWHC 258 (Admin), [2002] 1 WLR 1754, [2002] Env LR 27.

A person who commits an offence under the Environmental Protection Act 1990 s 33 is liable: (1) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 or both; (2) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both: s 33(8) (substituted for former s 33(8), (9) by the Clean Neighbourhoods and Environment Act 2005 s 41(1); Environmental Protection Act 1990 s 33(8) amended, and new s 33(9), (10) added, by SI 2006/937). However, a person (other than an establishment or undertaking) who commits a relevant offence is liable: (a) on summary conviction, to a fine not exceeding the statutory maximum; and (b) on conviction on indictment, to a fine: Environmental Protection Act 1990 s 33(9) (as so added). In s 33, 'relevant offence' means an offence under s 33 in respect of a contravention of s 33(1)(c) (see head (3) in the text) consisting of the treatment, keeping or disposal within the curtilage of a domestic property of household waste from that property: s 33(10) (as so added). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

Where commercial flytipping is deliberate, repeated, large scale, highly organised, financially motivated and highly profitable, it is appropriate to impose a custodial sentence, even in the absence of aggravating features: *R v Kelleher* [2008] EWCA Crim 3055, [2009] 2 Cr App Rep (S) 188, [2009] All ER (D) 18 (Mar).

For cases on sentencing generally see *R v O'Brien* [2000] 2 Cr App Rep (S) 358, [2000] Env LR 653, [2000] All ER (D) 192, CA; *R v Garrett (Terence William)* [1998] Env LR D2, CA. As to 'due diligence' defences see *Durham County Council v Peter Connors Industrial Services Ltd* [1992] Crim LR 743, [1993] Env LR 197; *Environment Agency v Short* [1999] Env LR 300. As to 'emergency' defences see *Waste Incineration Services v Dudley Metropolitan Borough Council* [1992] Env LR 29. As to 'Act of God' defences see *Southern Water Authority v Pegrum and Pegrum* [1989] Crim LR 442, 153 JP 581, DC.

As to liability of bodies corporate see PARA 145.

20 Environmental Protection Act 1990 s 33(7)(a).

21 As to the meaning of 'waste regulation authority' see PARA 620 note 6.

22 Environmental Protection Act 1990 s 33(7)(c) (substituted by the Environment Act 1995 Sch 22 para 64).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(3) UNAUTHORISED OR HARMFUL DEPOSITING, TREATMENT OR DISPOSAL OF WASTE/656. Investigation and enforcement costs.

656. Investigation and enforcement costs.

Where a person is convicted of a relevant offence¹, the court by or before which the offender is convicted may make an order² requiring him to pay to an enforcement authority³ a sum which appears to the court not to exceed the costs arising from:

- 1590 (1) investigations of the enforcement authority which resulted in the conviction⁴; and
- 1591 (2) the seizure by the enforcement authority of a vehicle involved in the offence⁵.

1 Is an offence (1) under the Environmental Protection Act 1990 s 33, in respect of a contravention of s 33(1) (see PARA 655); (2) under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(a) (see PARA 674 head (1)), in respect of a waste operation or a mining waste operation: Environmental Protection Act 1990 s 33A(1) (s 33A added by the Clean Neighbourhoods and Environment Act 2005 s 42(1); and the Environmental Protection Act 1990 s 33A(1) substituted by SI 2007/3538; and amended by SI 2009/1799). As to the meaning of 'waste operation' see PARA 663 note 1; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538; and amended by SI 2009/1799). As to the meaning of 'mining waste operation' see PARA 663 note 1; definition applied by the Environmental Protection Act 1990 s 29(13) (as so added and amended).

2 The power of a court to make an order under the Environmental Protection Act 1990 s 33A is in addition to its power to make an order under the Prosecution of Offences Act 1985 s 18 (award of costs against accused) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2063): Environmental Protection Act 1990 s 33A(4) (as added: see note 1).

3 For these purposes, 'enforcement authority' means the Environment Agency or a waste collection authority: Environmental Protection Act 1990 s 33A(5) (as added: see note 1). As to the Environment Agency see PARA 68 et seq. As to the meaning of 'waste collection authority' see PARA 620 note 8.

4 Environmental Protection Act 1990 s 33A(2)(a) (as added: see note 1).

5 Environmental Protection Act 1990 s 33A(2)(b) (as added: see note 1). As to the seizure of such a vehicle see s 34B; and PARA 659. The costs arising from the seizure of a vehicle as specified in s 33A(2)(b) may include the cost of disposing of the contents of the vehicle: s 33A(3) (as so added).

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657. Clean-up costs.

Where a person is convicted of a relevant offence¹, the reference in the provision of the Powers of Criminal Courts (Sentencing) Act 2000 concerning compensation orders² to loss or damage resulting from the offence includes costs incurred³ or to be incurred by a relevant person⁴ in: (1) removing the waste deposited or disposed of in or on the land⁵; (2) taking other steps to eliminate or reduce the consequences of the deposit or disposal⁶; or (3) both⁷.

¹ I.e. an offence (1) under the Environmental Protection Act 1990 s 33, in respect of a contravention of s 33(1) consisting of the deposit or disposal of controlled waste or extractive waste (see PARA 655); (2) under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(a) (see PARA 674 head (1)), in respect of a contravention of reg 12 (see PARA 663) consisting of the disposal of waste: Environmental Protection Act 1990 s 33B(1) (s 33B added by the Clean Neighbourhoods and Environment Act 2005 s 43(1); and the Environmental Protection Act 1990 s 33B(1) substituted by SI 2007/3538; and amended by SI 2009/1799). As to the meaning of 'controlled waste' see PARA 624. As to the meaning of 'extractive waste' see PARA 663 note 1; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538; and amended by SI 2009/1799).

² I.e. under the Powers of Criminal Courts (Sentencing) Act 2000 s 130(1)(a): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1685.

³ The reference in the Environmental Protection Act 1990 s 33B(2) to costs incurred does not, in the case of the Environment Agency or a waste collection authority, include any costs which the Agency or authority has already recovered under s 59(8) (see PARA 702): s 33B(4) (as added: see note 1). In relation to the costs referred to in s 33B(2), the reference in the Powers of Criminal Courts (Sentencing) Act 2000 s 131(1) (limit on amount payable) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1685) to £5,000 is instead to be construed as a reference to the amount of those costs (or, if the costs have not yet been incurred, the likely amount): Environmental Protection Act 1990 s 33B(5) (as so added; and amended by SI 2006/937). However, the Environmental Protection Act 1990 s 33B(5) does not apply where a person (other than an establishment or undertaking) is convicted of a relevant offence within the meaning of s 33 (see PARA 655 note 19): s 33B(6) (s 33B as so added; s 33B(6) added by SI 2006/937). As to the Environment Agency see PARA 68 et seq. As to the meaning of 'waste collection authority' see PARA 620 note 8.

⁴ For these purposes, 'relevant person' means: (1) the Environment Agency; (2) a waste collection authority; (3) the occupier of the land; (4) the owner of the land (within the meaning of the Environmental Protection Act 1990 s 78A(9)) (see PARA 762 note 9): s 33B(3) (as added: see note 1).

⁵ Environmental Protection Act 1990 s 33B(2)(a) (as added: see note 1).

⁶ Environmental Protection Act 1990 s 33B(2)(b) (as added: see note 1).

⁷ Environmental Protection Act 1990 s 33B(2)(c) (as added: see note 1).

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658. Forfeiture of vehicles.

Where a person is convicted of a relevant offence¹, the court by or before which the offender is convicted may make an order² if: (1) the court is satisfied that a vehicle³ was used in or for the purposes of the commission of the offence⁴; and (2) at the time of his conviction the offender has rights in the vehicle⁵.

Such an order operates to deprive the offender of his rights in the vehicle (including its fuel) at the time of his conviction and to vest those rights in the relevant enforcement authority⁶. In a case where a vehicle has been seized⁷ and the offender retains rights in any of the vehicle's contents, an order⁸ may, if and to the extent that it so specifies, deprive the offender of those rights and vest them in the relevant enforcement authority⁹. Where such an order is made, the relevant enforcement authority may¹⁰ take possession of the vehicle¹¹. The court may make such an order whether or not it also deals with the offender in any other way in respect of the offence of which he is convicted¹².

In considering whether to make an order¹³ a court must in particular have regard to:

- 1592 (a) the value of the vehicle¹⁴;
- 1593 (b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making)¹⁵;
- 1594 (c) the offender's need to use the vehicle for lawful purposes¹⁶;
- 1595 (d) whether, in a case where it appears to the court that the offender is engaged in a business which consists wholly or partly in activities which are unlawful¹⁷, the making of the order is likely to inhibit the offender from engaging in further such activities¹⁸.

1 Ie an offence (1) under the Environmental Protection Act 1990 s 33, in respect of a contravention of s 33(1) consisting of the deposit or disposal of controlled waste (see PARA 655); (2) under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(a) (see PARA 674 head (1)), in respect of a contravention of reg 12 (see PARA 663) consisting of the disposal of waste: Environmental Protection Act 1990 s 33C(1) (s 33C added by the Clean Neighbourhoods and Environment Act 2005 s 44(1); and the Environmental Protection Act 1990 s 33C(1) substituted by SI 2007/3538). As to the meaning of 'controlled waste' see PARA 624.

However the Environmental Protection Act 1990 s 33C does not apply where a person (other than an establishment or undertaking) is convicted of a relevant offence within the meaning of s 33: s 33C(1A) (s 33C as so added; s 33C(1A) added by SI 2006/937).

The Powers of Criminal Courts (Sentencing) Act 2000 s 143 (power to deprive offender of property) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1807) does not apply in any case where the Environmental Protection Act 1990 s 33C applies: s 33C(8) (as so added).

2 Ie under the Environmental Protection Act 1990 s 33C.

3 'Vehicle' means any motor vehicle or trailer within the meaning of the Road Traffic Regulation Act 1984 (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 210) or any mobile plant: Environmental Protection Act 1990 s 33C(10) (as added: see note 1). As to the meaning of 'mobile plant' see PARA 655 note 8.

4 Environmental Protection Act 1990 s 33C(2)(a) (as added: see note 1).

5 Environmental Protection Act 1990 s 33C(2)(b) (as added: see note 1).

6 Environmental Protection Act 1990 s 33C(3) (as added: see note 1). For these purposes, 'relevant enforcement authority' means: (1) the Environment Agency, where the proceedings in respect of the offence have been brought by or on behalf of the Agency; or (2) in any other case, the waste collection authority in whose area the offence was committed: s 33C(10) (as so added). As to the Environment Agency see PARA 68 et seq. As to the meaning of 'waste collection authority' see PARA 620 note 8.

7 Ie under the Environmental Protection Act 1990 s 34B: see PARA 659.

8 Ie under the Environmental Protection Act 1990 s 33C.

9 Environmental Protection Act 1990 s 33C(4) (as added: see note 1). For the purposes of s 33C, where a vehicle or its contents have been seized under s 34B (see PARA 659) in connection with the offence referred to in s 33C(1), any transfer by the offender after the seizure and before his conviction of any of his rights in the vehicle or its contents is of no effect: s 33C(9) (as so added).

10 Ie if it has not already done so under the Environmental Protection Act 1990 s 34C: see PARA 659.

11 Environmental Protection Act 1990 s 33C(5) (as added: see note 1).

12 Environmental Protection Act 1990 s 33C(6) (as added: see note 1).

13 Ie under the Environmental Protection Act 1990 s 33C.

14 Environmental Protection Act 1990 s 33C(7)(a) (as added: see note 1).

15 Environmental Protection Act 1990 s 33C(7)(b) (as added: see note 1).

16 Environmental Protection Act 1990 s 33C(7)(c) (as added: see note 1).

17 Ie unlawful by virtue of the Environmental Protection Act 1990 s 33 (see PARA 655) or the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(a) or 38(1)(b) (see PARA 674 heads (1), (2)).

18 Environmental Protection Act 1990 s 33C(7)(d) (as added (see note 1); and amended by SI 2007/3538).

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659. Power to search and seize vehicles.

As from a day to be appointed, the following provisions have effect¹. Where an authorised officer² of an enforcement authority³ or a constable⁴ reasonably believes that the grounds in head (a) or head (b) below exist⁵, he may: (1) search the vehicle⁶; (2) seize the vehicle and any of its contents⁷. The grounds referred to above are:

1596 (a) an offence under the Environmental Protection Act 1990⁸ has been committed, or an offence under the Environmental Permitting (England and Wales) Regulations 2007⁹ has been committed in relation to a waste operation¹⁰, a vehicle was used in the commission of the offence, and proceedings for the offence have not yet been brought against any person¹¹; or

1597 (b) such an offence under the Environmental Permitting (England and Wales) Regulations 2007 is being or is about to be committed, or such an offence under the Environmental Permitting (England and Wales) Regulations 2007¹² is being or is about to be committed in relation to a waste operation, and a vehicle is being or is about to be used in the commission of the offence¹³.

In acting under heads (1) and (2) above the authorised officer or constable may stop the vehicle¹⁴ and enter any premises for the purpose of searching or seizing the vehicle¹⁵.

A person commits an offence¹⁶ if he fails without reasonable excuse to give any assistance that an authorised officer or constable may reasonably request in the exercise of the above powers¹⁷, or he otherwise intentionally obstructs an authorised officer or constable in exercising those powers¹⁸.

Where an authorised officer or constable has stopped a vehicle¹⁹, he may require any occupant of the vehicle to give him the occupant's name and address²⁰, the name and address of the registered owner of the vehicle²¹, and any other information he may reasonably request²². A person commits an offence²³ if: (i) he fails without reasonable excuse to comply with any of the above requirements²⁴; (ii) he gives information so required that is to his knowledge false or misleading in a material way, or that is given recklessly and is false or misleading in a material way²⁵.

Where under the above powers²⁶ an authorised officer or constable seizes a vehicle or its contents ('seized property') on behalf of an enforcement authority, the authority may remove the seized property to such a place as it considers appropriate²⁷. An enforcement authority must deal with any seized property in accordance with regulations made by the appropriate person²⁸. Such regulations may in particular include provision as to:

1598 (A) the duties of enforcement authorities in relation to the safe custody of seized property²⁹;

1599 (B) the circumstances in which they must return any such property to a person claiming entitlement to it³⁰;

1600 (C) the manner in which such persons, and the seized property to which they are entitled, may be determined³¹;

1601 (D) the circumstances in which an enforcement authority may sell, destroy or otherwise dispose of seized property³²;

1602 (E) the uses to which the proceeds of any such sale may be put³³.

1 The Environmental Protection Act 1990 ss 34B, 34C are added by the Clean Neighbourhoods and Environment Act 2005 s 46 as from a day to be appointed under s 108. At the date at which this volume states the law no such day had been appointed in relation to England; in relation to Wales, the appointed day for certain purposes is 16 March 2006: see the Clean Neighbourhoods and Environment Act 2005 (Commencement No 1 and Savings) (Wales) Order 2006, SI 2006/768, art 3.

2 For the purposes of the Environmental Protection Act 1990 ss 34B, 34C, 'authorised officer' means an officer of an enforcement authority who is authorised in writing by the authority for the purposes of s 34B; and 'enforcement authority' means: (1) the Environment Agency; or (2) a waste collection authority: s 34B(11) (as added: see note 1). As to the Environment Agency see PARA 68 et seq. As to the meaning of 'waste collection authority' see PARA 620 note 8.

3 See note 2.

4 As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

5 Environmental Protection Act 1990 s 34B(1) (as added: see note 1).

6 Environmental Protection Act 1990 s 34B(4)(a) (as added: see note 1). For the purposes of ss 34B, 34C, 'vehicle' means any motor vehicle or trailer within the meaning of the Road Traffic Regulation Act 1984 (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 210) or any mobile plant: Environmental Protection Act 1990 s 34B(11) (as so added). As to the meaning of 'mobile plant' see PARA 655 note 8.

A vehicle or its contents seized under s 34B(4): (1) by an authorised officer of an enforcement authority, are seized on behalf of that authority; (2) by a constable in the presence of an authorised officer of an enforcement authority, are seized on behalf of that authority; (3) by a constable without such an officer present, are seized on behalf of the waste collection authority in whose area the seizure takes place: s 34B(6) (as so added).

7 Environmental Protection Act 1990 s 34B(4)(b) (as added: see note 1). See note 6.

8 Ie under the Environmental Protection Act 1990 s 33 (see PARA 655); or s 34 (see PARA 645).

9 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(a) or (b): see PARA 674 heads (1), (2).

10 As to the meaning of 'waste operation' see PARA 663 note 1; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538; and amended by SI 2009/1799).

11 Environmental Protection Act 1990 s 34B(2) (as added (see note 1); and amended by SI 2007/3538).

12 See notes 8, 9.

13 Environmental Protection Act 1990 s 34B(3) (as added (see note 1); and amended by SI 2007/3538).

14 Environmental Protection Act 1990 s 34B(5)(a) (as added: see note 1). However, only a constable in uniform may stop a vehicle on any road: see s 34B(5)(a) (as so added). 'Road' has the same meaning as in the Road Traffic Regulation Act 1984 (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 206): Environmental Protection Act 1990 s 34B(11) (as so added).

15 Environmental Protection Act 1990 s 34B(5)(b) (as added: see note 1).

16 A person guilty of an offence under the Environmental Protection Act 1990 s 34B is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 34B(10) (as added: see note 1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

17 Environmental Protection Act 1990 s 34B(7)(a) (as added: see note 1). The powers referred to in the text are those under s 34B(4) or s 34B(5).

18 Environmental Protection Act 1990 s 34B(7)(b) (as added: see note 1).

19 Ie under the Environmental Protection Act 1990 s 34B(5)(a): see the text and note 14.

20 Environmental Protection Act 1990 s 34B(8)(a) (as added: see note 1).

21 Environmental Protection Act 1990 s 34B(8)(b) (as added: see note 1).

- 22 Environmental Protection Act 1990 s 34B(8)(c) (as added: see note 1).
- 23 As to the penalty see note 16.
- 24 Environmental Protection Act 1990 s 34B(9)(a) (as added: see note 1). The requirements referred to in the text are those under s 34B(8).
- 25 Environmental Protection Act 1990 s 34B(9)(b) (as added: see note 1).
- 26 le under the Environmental Protection Act 1990 s 34B.
- 27 Environmental Protection Act 1990 s 34C(1) (as added: see note 1).
- 28 Environmental Protection Act 1990 s 34C(2) (as added: see note 1). The appropriate person may issue guidance to enforcement authorities in relation to the performance of their functions under regulations under s 34C(2): s 34C(5) (as so added). As to the meaning of 'appropriate person' see PARA 646 note 4.
- 29 Environmental Protection Act 1990 s 34C(3)(a) (as added: see note 1).
- 30 Environmental Protection Act 1990 s 34C(3)(b) (as added: see note 1).
- 31 Environmental Protection Act 1990 s 34C(3)(c) (as added: see note 1).
- 32 Environmental Protection Act 1990 s 34C(3)(d) (as added: see note 1). Regulations making provision under s 34C(3)(d): (1) must (subject to head (3) below) require the enforcement authority to publish a notice in such form, and to take any other steps, as may be specified in the regulations for informing persons who may be entitled to the seized property that it has been seized and is available to be claimed; (2) must (subject to head (3) below) prohibit the authority from selling, destroying or otherwise disposing of any seized property unless a period specified in the regulations has expired without any obligation arising under the regulations for the authority to return the property to any person; (3) may allow for the requirements in heads (1) and (2) above to be dispensed with if the condition of the seized property requires its disposal without delay: s 34C(4) (as so added). At the date at which this volume states the law no such regulations had been made.
- 33 Environmental Protection Act 1990 s 34C(3)(e) (as added: see note 1).

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660. Liability for damage caused by waste.

Where any damage¹ is caused by waste² which has been deposited in or on land³, any person who deposited it, or knowingly caused or knowingly permitted it to be deposited, in either case so as to commit an offence⁴, is liable for the damage⁵ except where the damage:

- 1603 (1) was due wholly to the fault⁶ of the person who suffered it⁷; or
- 1604 (2) was suffered by a person who voluntarily accepted the risk of the damage being caused⁸,

but without prejudice to any liability arising otherwise than under this provision⁹.

1 For these purposes, 'damage' includes the death of, or injury to, any person (including any disease and any impairment of physical or mental condition): Environmental Protection Act 1990 s 73(8).

2 As to the meaning of 'waste' see PARA 623.

3 As to the meaning of 'land' see PARA 620 note 2. As to the meaning of 'deposit' see PARA 655 note 1.

4 I.e. under the Environmental Protection Act 1990 s 33(1): see PARA 655.

5 Environmental Protection Act 1990 s 73(6).

As to liability under the EC Environmental Liability Directive see PARA 5.

6 For these purposes, 'fault' has the same meaning as in the Law Reform (Contributory Negligence) Act 1945 (see **NEGLIGENCE** vol 78 (2010) PARA 75): Environmental Protection Act 1990 s 73(8).

7 Environmental Protection Act 1990 s 73(6)(a). As to the role of contributory negligence under s 73(6) see *Chappell v Imperial Design Ltd* [2001] Env LR 33, CA.

8 Environmental Protection Act 1990 s 73(6)(b). See note 7.

9 Environmental Protection Act 1990 s 73(6). See also the similar provisions of the Control of Pollution Act 1974 s 88 (amended by the Limitation Act 1980 Sch 3 para 12).

The matters which may be proved by way of defence under the Environmental Protection Act 1990 s 33(7) (see PARA 655) may be proved also by way of defence to a claim brought under s 73(6): s 73(7).

For the purposes of: (1) the Fatal Accidents Act 1976 (see **NEGLIGENCE** vol 78 (2010) PARA 25 et seq); (2) the Law Reform (Contributory Negligence) Act 1945 (see **NEGLIGENCE** vol 78 (2010) PARA 75 et seq); and (3) the Limitation Act 1980 (see **LIMITATION PERIODS**), any damage for which a person is liable under the Environmental Protection Act 1990 s 73(6) is to be treated as due to his fault: s 73(9). As to liability for negligence, nuisance and trespass see **NEGLIGENCE; NUISANCE; TORT** vol 97 (2010) PARA 401.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(3) UNAUTHORISED OR HARMFUL DEPOSITING, TREATMENT OR DISPOSAL OF WASTE/661. Prohibition on disposal or recovery of controlled waste on behalf of another person except as a registered broker.

661. Prohibition on disposal or recovery of controlled waste on behalf of another person except as a registered broker.

Subject to certain exceptions¹, it is an offence for an establishment or undertaking to arrange as dealer or broker for the disposal or recovery of controlled waste² on behalf of another person unless it is a registered broker of controlled waste³. A person guilty of such an offence is liable on summary conviction to a penalty⁴.

1 As to the exceptions see the Waste Management Licensing Regulations 1994, SI 1994/1056, reg 20(2)-(4) (reg 20(2) substituted by SI 2007/3538; and the Waste Management Licensing Regulations 1994, SI 1994/1056, reg 20(4) amended by SI 2006/937).

In particular, the Waste Management Licensing Regulations 1994, SI 1994/1056, reg 20(1) (see the text and notes 1-3) does not apply in relation to an arrangement under which an establishment or undertaking will itself carry out the disposal or recovery of the waste and either (1) it is authorised to carry out the disposal or recovery of the waste by an environmental permit under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 664), a consent under the Water Resources Act 1991 Pt III Ch II (ss 85-91) (see PARA 291 et seq) or a licence under the Food and Environment Protection Act 1985 Pt II (ss 5-15) (see PARA 525 et seq); or (2) the recovery of the waste is covered by (a) an exempt waste operation under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 663 note 1) or any other operation exempt from the requirements of the Environmental Protection Act 1990 s 33(1)(a), (b) (see PARA 655 heads (1), (2)) under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538; or (b) the Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699, art 3 (see PARA 528): see the Waste Management Licensing Regulations 1994, SI 1994/1056, reg 20(2) (as so substituted).

2 As to the meaning of 'controlled waste' see PARA 624; and as to the meaning of 'waste' see PARA 623.

3 Waste Management Licensing Regulations 1994, SI 1994/1056, reg 20(1). As to registers of brokers of controlled waste see reg 20(7), Sch 5 para 2 (amended by SI 1996/593). As to applications for registration see the Waste Management Licensing Regulations 1994, SI 1994/1056, Sch 5 paras 1(2)-(4), 3 (amended by SI 1998/606). As to registration and the amendment of entries see the Waste Management Licensing Regulations 1994, SI 1994/1056, Sch 5 para 4; and as to revocation of registration see Sch 5 paras 1(2), (3), 5. As to appeals see Sch 5 paras 1(5), 6 (amended by SI 1996/593). As to the duration of registration see the Waste Management Licensing Regulations 1994, SI 1994/1056, Sch 5 para 7; and as to the cessation of registration see Sch 5 para 8. The provisions of the Environmental Protection Act 1990 s 71(2), (3) (power to obtain information) (see PARA 626) have effect as if the Waste Management Licensing Regulations 1994, SI 1994/1056, reg 20, Sch 5 were provisions of the Environmental Protection Act 1990 Pt II (ss 29-78): see the Waste Management Licensing Regulations 1994, SI 1994/1056, reg 20(8).

4 Waste Management Licensing Regulations 1994, SI 1994/1056, reg 20(5). The penalty is a fine not exceeding level 5 on the standard scale: see s 20(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. The Environmental Protection Act 1990 s 157 (offences by bodies corporate) (see PARA 145) applies to an offence under the Waste Management Licensing Regulations 1994, SI 1994/1056, reg 20 as it applies to an offence under the Environmental Protection Act 1990: reg 20(6).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(4) ENVIRONMENTAL PERMITTING/(i) In general/662. Introduction.

(4) ENVIRONMENTAL PERMITTING

(i) In general

662. Introduction.

Calls for a more administratively efficient system of pollution control regulation led to the introduction of a streamlined permitting system under the Environmental Permitting (England and Wales) Regulations 2007¹ which provide for a stand-alone system of environmental permits for specified 'regulated facilities'² in England and Wales. The new system combines the previous waste management licensing system³ with the pollution prevention and control ('PPC') permitting system⁴. The aim is administrative simplicity and although there is much in the way of amendment⁵ the substantive nature of both systems remains intact. It is also important to note that 'environmental permitting' is not simply a set of regulations, but rather an ongoing programme likely to be extended in the future⁶. There is a single procedural framework with a broad outline for making applications⁷ and granting permits⁸ and also for monitoring and enforcement⁹. There is also a general duty for regulators¹⁰ to exercise relevant functions¹¹ to achieve compliance with relevant European Union Directives¹². Generally the 2007 Regulations apply to the Crown¹³.

1 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: see also PARA 663 et seq. The 2007 Regulations came into force on 6 April 2008 (see reg 1(1)) and were made in exercise of the powers conferred by the Pollution Prevention and Control Act 1999 s 2, Sch 1: see PARAS 186, 187.

As to transitional provisions see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, regs 69, 70, 71 (amended by SI 2009/1799), and the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 71A (added by SI 2009/1799) (and in regard to reg 71A see also PARA 663 note 2). As to savings see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 72 (amended by SI 2009/1307; and SI 2009/1799).

2 As to the meaning of 'regulated facility' see PARA 663 note 1.

3 Ie contained in the Environmental Protection Act 1990 ss 35-43 (which are repealed) and the Waste Management Licensing Regulations 1994, SI 1994/1056 (which are mostly revoked and replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, but see in particular PARA 661).

4 Ie the Pollution Prevention and Control (England and Wales) Regulations, SI 2000/1973 (now revoked), made under the Pollution Prevention and Control Act 1999 s 2: see PARA 186.

5 See eg notes 3, 4.

6 See the Department for Environment, Food and Rural Affairs website which, at the date at which this volume states the law, was www.defra.gov.uk.

7 As to making applications see PARA 664 note 4.

8 As to granting permits see PARA 664.

9 As to enforcement see PARA 672 et seq.

10 As to the meaning of 'regulator' see note 13.

11 As to relevant functions see PARA 684 et seq.

12 The Directives include the following: EEC Council Directive 87/217 (OJ L85, 28.3.87, p 40) on the prevention and reduction of environmental pollution by asbestos (see PARAS 11, 47); EEC Council Directive 92/112 (OJ L409, 31.12.92, p 11) on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry (see PARA 38); European Parliament and EC Council Directive 94/63 (OJ L365, 31.12.94, p 24) on the control of volatile organic compound emissions resulting from the storage of petrol and its distribution from terminals to service stations (see PARA 48); EC Council Directive 96/61 (OJ L257, 10.10.96, p 26) concerning integrated pollution prevention and control (now replaced by European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version) (see PARA 6); EC Council Directive 99/13 (OJ L85, 29.3.99, p 1) on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (see PARA 12); EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) on the landfill of waste (see PARA 43); European Parliament and EC Council Directive 2000/53 (OJ L 269, 21.10.2000, p 34) on end-of-life vehicles (see PARAS 33, 39); European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2000, p 91) on the incineration of waste (see PARAS 11, 25, 41, 42); European Parliament and EC Council Directive 2001/80 (OJ L309, 27.11.2001, p 1) on the limitation of emissions of certain pollutants into the air from large combustion plants (see PARAS 11, 13, 18); European Parliament and EC Council Directive 2002/96 (OJ L37, 13.2.2003, p 24) on waste electrical and electronic equipment (see PARA 33); European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) on waste (see PARA 33). The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, transpose provisions of these Directives (see eg Schs 7, 9-18) which impose obligations either required to be delivered through permits or capable of being delivered through permits. In fact some of these Directives (eg Directives 2000/53, 2000/76, 2002/96) have other transposing and implementing regulations that apply the provisions of those Directives outside the permitting system.

13 The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (subject to Sch 4 paras 2-4) bind the Crown: reg 11, Sch 4 para 1. If the Crown contravenes a provision of the 2007 Regulations it is not criminally liable under reg 38 (see PARA 674); and no proceedings may be taken against it under reg 42 (see PARA 674): Sch 4 para 2(1). However (1) on the application of a regulator, the High Court may declare a contravention of the 2007 Regulations by the Crown to be unlawful; and (2) the 2007 Regulations apply to persons in the public service of the Crown as they apply to other persons: Sch 4 para 2(2). If the appropriate authority considers that in the interests of national security particular powers of entry must not be used in relation to particular Crown premises it may certify that those powers must not be used in relation to those premises: Sch 4 para 3(1). For the purposes of Sch 4 para 3, 'Crown premises' means premises held or used by or on behalf of the Crown; and 'power of entry' means a power of entry exercisable under the Environment Act 1995 s 108 (see PARA 148), in relation to a function under the 2007 Regulations: Sch 4 para 3(2). 'Regulator' means the authority on whom functions are conferred by reg 32 (see PARA 668), or by a direction under reg 33 (see PARA 669): reg 2(1). The 'appropriate authority' means (a) in relation to England, the Secretary of State (see PARA 58); and (2) in relation to Wales, the Welsh Ministers (see PARA 59): reg 2(1).

Schedule 4 para 4 applies in relation to a regulated facility operated or controlled by a person acting on behalf of (i) the Royal Household; (ii) the Duchy of Lancaster; or (iii) the Duke of Cornwall or other possessor of the Duchy of Cornwall: Sch 4 para 4(1). When serving or giving notices or notifications, or instituting proceedings, the following person must be treated as the operator (A) in relation to head (i) above, the Keeper of the Privy Purse; (B) in relation to head (ii) above, the person appointed by the Chancellor of the Duchy of Lancaster; (C) in relation to head (iii) above, the person appointed by the Duke of Cornwall or other possessor of the Duchy of Cornwall: Sch 4 para 4(2). As to the meaning of 'regulated facility' see PARA 663 note 1. As to the meaning of 'operator' see PARA 664 note 1. As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(4) ENVIRONMENTAL PERMITTING/(ii) Environmental Permits/663. Requirement of an environmental permit.

(ii) Environmental Permits

663. Requirement of an environmental permit.

No person may operate a regulated facility¹ except under and to the extent authorised by an environmental permit².

¹ Subject to the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 8(2), (3), 'regulated facility' means any of the following: (1) an installation; (2) mobile plant other than waste mobile plant; (3) waste mobile plant; (4) a waste operation not carried on at an installation or by means of mobile plant; (5) a mining waste operation: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, regs 2(1), 8(1). 'Installation' means (except where used in the definition of 'excluded plant' in Sch 1 Pt 2 Section 5.1: see below) a stationary technical unit where one or more activities are carried on; and any other location on the same site where any other directly associated activities are carried on, and references to an installation include references to part of an installation: reg 2(1). For the purposes of reg 8, 'waste mobile plant' means mobile plant which is used to carry on a waste operation; and is not Part A mobile plant or Part B mobile plant: reg 8(4). 'Mobile plant' means plant which is not an installation; is used to carry on an activity or waste operation; and where not used to carry on a Part A activity, is designed to move or be moved whether on roads or other land: reg 2(1). 'Waste operation' means recovery or disposal of waste: reg 2(1). 'Waste', except where otherwise defined, means anything that is waste for the purposes of European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) on waste (see PARA 33); and is not excluded from the scope of that Directive by art 2(1): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1).

'Activity' means, subject to Sch 1 Pt 1, an activity listed in Sch 1 Pt 2 (amended by SI 2009/1799; and SI 2009/3381): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1). Schedule 1 contains detailed descriptions of activities which must be authorised by a permit in order to operate, and Sch 1 also categorises those activities as 'Part A(1)', 'Part A(2)' and 'Part B' and these categories are used in reg 32 (see PARA 668) to designate the regulator. Sch 1 Pt 2 is divided into Chapters that are themselves divided into Sections. The chapters are as follows: Ch 1 Energy Activities; Ch 2 Production and Processing of Metals; Ch 3 Mineral Industries; Ch 4 The Chemical Industry; Ch 5 Waste Management; and Ch 6 Other Activities. 'Part A activity' means a Part A(1) activity or a Part A(2) activity; 'Part A(1) activity' means an activity falling within Part A(1) of any Section in Sch 1 Pt 2 (see above); 'Part A(2) activity' means an activity falling within Part A(2) of any Section in Sch 1 Pt 2; and 'Part B activity' means an activity falling within Part B of any Section in Sch 1 Pt 2: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 3(1). 'Part A installation' means a Part A(1) installation or a Part A(2) installation; 'Part A(1) installation' means an installation where a Part A(1) activity is carried on, including an installation also carrying on a Part A(2) activity or a Part B activity; 'Part A(2) installation' means an installation where a Part A(2) activity is carried on, not being a Part A(1) installation but including an installation also carrying on a Part B activity; and 'Part B installation' means, subject to Sch 1 Pt 2 Sections 2.2, 5.1 and 6.4, an installation where a Part B activity is carried on, not being a Part A installation: reg 3(2). 'Part A mobile plant' means Part A(1) mobile plant or Part A(2) mobile plant; 'Part A(1) mobile plant' means mobile plant used to carry on a Part A(1) activity, including plant also carrying on a Part A(2) activity or a Part B activity; 'Part A(2) mobile plant' means mobile plant used to carry on a Part A(2) activity, not being Part A(1) mobile plant but including plant also carrying on a Part B activity; and 'Part B mobile plant' means mobile plant used to carry out a Part B activity, not being Part A mobile plant: reg 3(3).

'Mining waste operation' means the management of extractive waste, whether or not involving a mining waste facility, but does not include the activities in European Parliament and EC Council Directive 2006/21 (OJ L102 11.4.2006 p 15) on the management of waste from extractive industries and amending Directive 2004/35 art 2(2)(c) (see PARA 45): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1) (definition added by SI 2009/1799). 'Extractive waste' means waste within the meaning of European Parliament and EC Council Directive 2006/21 (OJ L102 11.4.2006 p 15) art 2(1), except where it is excluded from the scope of that Directive by art 2(2)(a), (b): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1) (definition added by SI 2009/1799).

An exempt waste operation (see below) is not a regulated facility within the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 8(1)(a) (see head (1) above) where it is an activity falling within Sch 1 Ch 5 Section 5.3 or Section 5.4 or a directly associated activity of that activity (see below): reg 8(2)

(substituted by SI 2009/1799). An exempt waste operation is not a regulated facility within the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 8(1)(b)-(d) (see heads (2)-(4) above); and the following are not regulated facilities within reg 8(c) or (d) (see heads (3), (4) above): an excluded waste operation; the disposal or recovery of household waste from a domestic property within the curtilage of that property by a person other than an establishment or undertaking; reg 8(3) (amended by SI 2009/1799). For these purposes 'household waste' has the meaning given in the Environmental Protection Act 1990 s 75(5) (see PARA 624): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 8(4).

'Excluded waste operation' means (a) a waste operation which is or forms part of an operation which is the subject of a licence under the Food and Environment Protection Act 1985 Pt II (ss 5-15) (see PARA 525 et seq), or by virtue of an order under s 7 (see PARA 527), does not require such a licence; (b) the disposal of liquid waste under a consent under the Water Resources Act 1991 Pt III Ch II (ss 85-91) (see PARA 291 et seq); (c) the disposal of agricultural waste in or on land under an authorisation under the Groundwater Regulations 1998, SI 1998/2746, reg 18 (revoked) (see now the Groundwater (England and Wales) Regulations 2009, SI 2009/2902; and PARA 335); (d) the disposal or recovery of waste which is not to be treated as industrial waste or commercial waste by virtue of the Controlled Waste Regulations 1992, SI 1992/588, reg 7(1) (see PARA 624): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1), 4. 'Disposal' has the same meaning as in European Parliament and EC Council Directive 2006/12 (OJ L114, 27.4.2006, p 9) and related terms must be construed accordingly: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1).

A waste operation is an 'exempt waste operation' if the requirements in Sch 2 para 3(1) (see generally below) are met in respect of the waste operation: reg 2(1), 5(1) (reg 5 substituted by SI 2009/3381). The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 2 (substituted by SI 2009/3381) (exempt waste operations: general) (see below) has effect: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 5(2) (as so substituted). The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 2 contains the procedure in relation to exempt waste operations and covers the following: interpretation (see Sch 2 paras 1, 2 (as so substituted)); requirements for exempt waste operations (see Sch 2 para 3 (as so substituted)); procedure for registering an exempt waste operation (see Sch 2 para 4 (as so substituted)); restrictions on registering exempt waste operations carried on at the same place (see Sch 2 para 5 (as so substituted)); fee for registration relating to WEEE operations (see Sch 2 para 6 (as so substituted)); validity of registration (see Sch 2 para 7 (as so substituted)); changes to relevant particulars (see Sch 2 para 8 (as so substituted)); register of exempt waste operations (see Sch 2 para 9 (as so substituted)); duty to remove entries from the register (see Sch 2 para 10 (as so substituted)); exclusion from the register of information affecting national security (see Sch 2 para 11 (as so substituted)); record keeping (see Sch 2 para 12 (as so substituted)); and periodic inspections (see Sch 2 para 13 (as so substituted)). 'WEEE operation' means a waste operation falling within a description in the para T11 in Sch 3 Pt 2 Ch 2 (repair or refurbishment of WEEE) (see below): Sch 2 para 1 (as so substituted). 'WEEE' has the meaning given by European Parliament and EC Council Directive 2002/96 (OJ L37, 13.2.2003, p 24) on waste electrical and electronic equipment art 3(b) (see generally PARA 33): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1). A waste operation cannot be an exempt waste operation unless it falls within Sch 3 (substituted by SI 2009/3381) (exempt waste operations: descriptions and conditions); and see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 3A (added by SI 2009/391) (descriptions and conditions: other waste operations to which the Environmental Protection Act 1990 s 33(1)(a) does not apply). See also PARA 655 note 7.

'Directly associated activity' means (i) in relation to a SED activity, an operation which has a technical connection with the SED activity, is carried on on the same site as the SED activity, and could have an effect on a discharge of volatile organic compounds into the environment; (ii) in relation to any other activity, an operation which has a technical connection with the activity, is carried on on the same site as the activity, and could have an effect on pollution: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1). 'SED activity' means an activity falling within Sch 1 Pt 2 Section 7 (see generally above): reg 2(1). As to the meaning of 'operator' see PARA 664 note 1. As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

2 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 12(1) (reg 12 substituted by SI 2009/1799). As to the meaning of 'environmental permit' see PARA 664.

The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 12(1) is subject to reg 71A (transitional provision: existing mining waste operations): reg 12(2) (as so substituted). Regulation 12(1) does not apply to an existing mining waste operation involving an existing mining waste facility until the date referred to in reg 71A(2) (see below): reg 71A(1) (reg 71A added by SI 2009/1799). The date referred to in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 71A is (1) if an application for the grant or variation of an environmental permit is made on or before 1 May 2011 (a) if the application is granted, the date of the grant; (b) if the application is refused, and the applicant appeals against the refusal in accordance with reg 31(1) (see PARA 667), the date the appeal is determined or withdrawn; (c) if the application is refused, and the applicant is entitled to appeal against the refusal in accordance with reg 31(1) but does not do so, the day after the last day on which an appeal could have been brought, determined in accordance with Sch 6 para 3(1) (see generally PARA 667 note 20); or (d) if the application is for the grant or variation of an environmental permit in relation to a Category A mining waste facility that is an existing mining waste facility

and the application is refused pursuant to Sch 18B para 14(2) (see generally PARA 671 note 15), the date of the refusal; or (2) if no such application is made, 1 May 2011: reg 71A(2) (as so added). Where an existing mining waste operation is not covered by reg 71A(1) (see above), reg 12(1) does not apply to that operation until the date referred to in reg 71A(4): reg 71A(3) (as so added). The date referred to in reg 71A(4) is (i) if an application for the grant or variation of an environmental permit is made on or before 30 December 2010 (A) if the application is granted, the date of the grant; (B) if the application is refused, and the applicant appeals against the refusal in accordance with reg 31(1), the date the appeal is determined or withdrawn; or (C) if the application is refused, and the applicant does not appeal against the refusal, the day after the last day on which an appeal could have been brought, determined in accordance with Sch 6 para 3(1); or (ii) if no such application is made, 30 December 2010: reg 71A(4) (as so added). For the purposes of reg 71A, 'existing mining waste operation' means a mining waste operation subsisting on 1 May 2008: reg 71A(5) (as so added). 'Existing mining waste facility' means a mining waste facility in operation on 1 May 2008: reg 2(1) (definition added by SI 2009/1799). 'Mining waste facility' means a 'waste facility' as defined in European Parliament and EC Council Directive 2006/21 (OJ L102 11.4.2006 p 15) on the management of waste from extractive industries and amending Directive 2004/35 art 3(15) (see generally PARA 45) but excludes those activities mentioned in art 24(2) or art 24(4) first sentence: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1). 'Category A mining waste facility' means a mining waste facility that is classified as Category A under European Parliament and EC Council Directive 2006/21 (OJ L102 11.4.2006 p 15) art 9: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1) (definition added by SI 2009/1799).

As to other transitional provisions see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 70 (transitional provision: conversion of permits and licences subject to certain applications), reg 71 (amended by SI 2009/1799) (transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant); and the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 71B (added by SI 2009/3381) (transitional provision: exempt waste operations).

UPDATE

663 Requirement of an environmental permit

NOTE 1--Reference to SI 2009/391 should be to SI 2009/3381.

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664. Grant of an environmental permit.

On the application of an operator¹, the regulator² may grant to that operator a permit³ (an 'environmental permit') authorising the operation of a regulated facility⁴.

An environmental permit must specify (1) every regulated facility to which it relates; and (2) the person authorised to operate that regulated facility⁵. An environmental permit may be in electronic form⁶. An environmental permit authorising the operation of a regulated facility, other than mobile plant⁷, must include a map, plan or other description of the site showing the geographical extent of the site of the facility⁸.

Conditions in an environmental permit may require the operator to carry out works or do other things in relation to land which he is not entitled to do without obtaining the consent of another person⁹. If an environmental permit contains such a condition, the person whose consent is required must grant the operator such rights as are necessary to enable the operator to comply with the condition¹⁰.

If an environmental permit ('permit A') authorises the operation of mobile plant on the site of a regulated facility the operation of which is authorised by a separate environmental permit ('permit B'); and there is an inconsistency between the requirements imposed by permit A and those imposed by permit B, the requirements imposed by permit B prevail¹¹.

The regulator may authorise under a single environmental permit, the operation by the same operator (a) of more than one regulated facility on the same site; (b) of more than one mobile plant; or (c) of more than one standard facility¹², but may not otherwise authorise the operation of more than one regulated facility under a single environmental permit¹³.

If there is more than one environmental permit which authorises (i) the operation of mobile plant by the same operator; (ii) the operation of standard facilities¹⁴ by the same operator; or (iii) in any other case, the operation of regulated facilities on the same site by the same operator¹⁵, the regulator may replace the environmental permits with a consolidated environmental permit applying to the same regulated facilities; and subject to the same conditions as the permits being replaced¹⁶. The regulator may replace an environmental permit which has been varied with a consolidated environmental permit subject to the same conditions¹⁷.

Once granted an environmental permit continues in force until (A) it is revoked in whole¹⁸; (B) it is surrendered in whole¹⁹; or (C) it is replaced with a consolidated permit²⁰.

1 'Operator' means (1) the person who has control over the operation of a regulated facility; (2) if a regulated facility has not been put into operation, the person who will have control over the facility when it is put into operation; or (3) if a regulated facility has ceased to be in operation, the person who holds the environmental permit which authorised the operation of the facility: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, regs 2(1), 7. As to the meaning of 'regulated facility' see PARA 663 note 1. As to the meaning of 'environmental permit' see note 3.

2 As to the meaning of 'regulator' see PARA 662 note 13.

3 'Environmental permit' has the meaning given in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 13(1) (see the text): reg 2(1).

4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 13(1). Sch 5 Pt 1 (grant, variation, transfer and surrender of environmental permits) applies in relation to an application for the grant of an environmental permit: reg 13(2). The following matters are covered: making an application (see Sch 5 para 2); withdrawing an application (see Sch 5 para 3); further information in respect of a duly made application (see Sch 5 para 4); public participation (see Sch 5 paras 5-8 (Sch 5 para 5 amended by SI 2009/1799)); consultation (see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 5 paras 9, 10 (Sch 5 para 10 amended by SI 2009/1799)); duty to consider representations (see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 5 para 11); duty to determine an application (see Sch 5 para 12); identity and competence of the operator (see Sch 5 para 13); surrender applications (see Sch 5 para 14); time limits for determination (see Sch 5 paras 15, 16 (Sch 5 para 16 amended by SI 2009/1799)); notification of a determination or decision (see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 5 para 17); and date of effect of certain determinations and decisions (see Sch 5 para 18, 19).

As to the application of the Conservation of Habitats and Species Regulations 2010, SI 2010/490, regs 61, 62 ('the assessment provisions') to the granting of an environmental permit under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, see the Conservation of Habitats and Species Regulations 2010, SI 2010/490, reg 98; and **OPEN SPACES AND COUNTRYSIDE**.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 14(1).

6 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 14(2). As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

7 As to the meaning of 'mobile plant' see PARA 663 note 1.

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 14(3). If there is more than one regulated facility on the site, the map, plan or other description may show only the combined extent of all the facilities: reg 14(4).

9 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 15(1).

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 15(2). Sch 5 Pt 2 (compensation in relation to conditions affecting certain interests in land) applies where such rights are granted: reg 15(3). The following matters are covered: entitlement to compensation (see Sch 5 para 21); loss and damage for which compensation is payable (see Sch 5 para 22); date when entitlement to compensation arises (see Sch 5 para 23); application for compensation (see Sch 5 para 24); assessment of the amount to be paid by way of compensation (see Sch 5 para 25); payment of compensation (see Sch 5 para 26 (amended by SI 2009/1307)); and interest payable on compensation (see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 5 para 27).

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 16.

12 Ie other than a standard facility to which European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version) (see PARA 6). 'Standard facility' means a regulated facility described in standard rules published under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26(5) (see PARA 666): reg 2(1).

13 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 17 (substituted by SI 2009/1799).

14 Ie not being standard facilities to which European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) applies.

15 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 18(1).

16 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 18(2).

17 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 18(3).

18 Ie in accordance with the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 22: see PARA 665.

19 Ie in accordance with Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 25, Sch 5 Pt 1: see note 4.

20 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 19. This replacement would be in accordance with reg 18(2) (see the text and note 16), reg 22(5) (see PARA 665), Sch 5 Pt 1 para 19(2) (see note 4).

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665. Variation, transfer, revocation and surrender of an environmental permit.

The regulator¹ may vary an environmental permit² on the application of the operator³ or on its own initiative⁴. However such a variation must not reduce the extent of the site of a regulated facility⁵.

The regulator may transfer an environmental permit in whole or in part from the operator to another person on the joint application of the operator and that other person⁶.

The regulator may revoke an environmental permit in whole or in part⁷. If the regulator revokes a permit in part, it may vary the permit conditions to the extent that it considers necessary to take account of the revocation⁸.

Where the regulator decides to revoke an environmental permit it must serve a notice on the operator specifying (1) the reasons for the revocation; (2) in the case of a partial revocation the extent to which the environmental permit is being revoked, and any variation to the conditions of the environmental permit; and (3) the date on which the revocation is to take place, which must not be less than 20 working days from the date on which the notice is served⁹. Unless the regulator withdraws a revocation notice, an environmental permit ceases to have effect on the date specified in the notice in the case of a revocation in whole, entirely; or in the case of a partial revocation, to the extent of the part revoked¹⁰.

In the case of a partial revocation, the regulator may replace the environmental permit with a consolidated environmental permit reflecting the change¹¹. If the regulator issues such a consolidated permit it must at the same time serve a notice on the operator specifying any variation to the permit conditions; and only the variations specified are subject to the right of appeal¹².

Where the regulator has decided to revoke an environmental permit and it considers that, after the revocation takes effect, it is appropriate for the operator to take steps (a) to avoid a pollution¹³ risk resulting from the operation of the regulated facility; or (b) to return the site of the regulated facility to a satisfactory state, having regard to the state of the site before the facility was put into operation¹⁴, the environmental permit continues to have effect to the extent that it requires the steps to be taken until the regulator issues a certificate stating that it is satisfied that all the steps have been taken¹⁵.

An operator may surrender an environmental permit¹⁶, in whole or in part, by notifying the regulator of the surrender¹⁷. A notification must (i) be made on the form provided by the regulator; (ii) include such information as is specified in the form; and (iii) specify the date on which the surrender is to take place, which must not be less than 20 working days from the date on which the notification is given¹⁸. The environmental permit ceases to have effect on the date specified in the notification to the extent specified there¹⁹.

In the case of a partial surrender if the regulator considers it necessary to vary the environmental permit conditions to take account of that surrender²⁰: (A) the regulator must serve a notice on the operator specifying the regulator's view²¹, the variation, and the date the variation takes effect²²; (B) if the date specified in the notice under head (A) above is later than the date specified in the relevant notification²³, the variation and partial surrender both take effect on the later date²⁴.

An operator may surrender an environmental permit²⁵, in whole or in part, by application to the regulator²⁶.

1 As to the meaning of 'regulator' see PARA 662 note 13.

2 As to the meaning of 'environmental permit' see PARA 664.

3 As to the meaning of 'operator' see PARA 664 note 1.

4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 20(1). Schedule 5 Pt 1 (grant, variation, transfer and surrender of environmental permits) (see PARA 664 note 4) applies in relation to an application to vary an environmental permit or a proposal to vary an environmental permit on the initiative of the regulator under reg 20(1): reg 20(4). 'Regulator-initiated variation' means the variation of an environmental permit on the initiative of the regulator under reg 20(1): reg 2(1).

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 20(2). As to the meaning of 'regulated facility' see PARA 663 note 1. Regulation 20(2) does not apply to Part B installations: reg 20(3). As to the meaning of 'Part B installation' see PARA 663 note 1.

6 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 21(1). Schedule 5 Pt 1 (grant, variation, transfer and surrender of environmental permits) (see PARA 664 note 4) applies in relation to the transfer of an environmental permit in whole or in part: reg 21(2). Where (1) an enforcement notice (see reg 36; and PARA 672) is in force in respect of an environmental permit; and (2) the permit is transferred to another person, either in whole or in part, the duty to comply with the enforcement notice is also transferred to the other person to the extent that it relates to the permit or part transferred: reg 21(2).

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 22(1).

Where an environmental permit authorises in whole or in part a waste operation which, on or after 6 April 2010, becomes an exempt waste operation, that part of the permit which authorises the exempt waste operation is revoked on the date that the operation becomes an exempt waste operation: reg 22(7) (added by SI 2009/3318). As to the meaning of 'exempt waste operation' see PARA 663 note 1.

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 22(2).

9 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 22(3). 'Revocation notice' means a notice served under reg 22(3): reg 2(1).

As to general provision made for notices, notifications, certificates, directions or forms under the 2007 Regulations see reg 10. For these purposes, 'instrument' means a notice, notification, certificate, direction or form under the 2007 Regulations: reg 10(1). An instrument must be in writing: reg 10(2). An instrument may be served on or given to a person by (1) delivering it to him in person; (2) leaving it at his proper address; or (3) sending it by post or electronic means to his proper address: reg 10(3). In the case of a body corporate, an instrument may be served on or given to the secretary or clerk of that body: reg 10(4). In the case of a partnership, an instrument may be served on or given to a partner or a person having control or management of the partnership business: reg 10(5). If a person to be served with or given an instrument has specified an address in the United Kingdom other than his proper address at which he or someone on his behalf will accept instruments of that description, that address must also be treated as his proper address: reg 10(6). As to the meaning of 'United Kingdom' see PARA 1 note 2. For these purposes, 'proper address' means (a) in the case of a body corporate or their secretary or clerk, the registered or principal office of that body, or the email address of the secretary or clerk; (b) in the case of a partnership or a partner or person having control or management of the partnership business, the principal office of the partnership, or the email address of a partner or a person having that control or management; (c) in any other case, a person's last known address, which includes an email address: reg 10(7). For the purposes of reg 10(7), the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is their principal office in the United Kingdom: reg 10(8). A form provided by the regulator which specifies an electronic address for submission may be submitted electronically to that address: reg 10(9). A form provided by the regulator for completion and submission through a website may be submitted through that site: reg 10(10).

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 22(4).

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 22(5).

12 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 22(6). The right of appeal referred to is in reg 31(1)(b): see PARA 667 head (2).

13 'Pollution' means any emission as a result of human activity which may (1) be harmful to human health or the quality of the environment; (2) cause offence to a human sense; (3) result in damage to material property; or (4) impair or interfere with amenities and other legitimate uses of the environment: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1).

'Emission' means (a) in relation to a Part A installation, the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into the air, water or land; (b) in relation to a Part B installation, the direct release of substances or heat from individual or diffuse sources in the installation into the air; (c) in relation to Part A mobile plant, the direct or indirect release of substances, vibrations, heat or noise from the mobile plant into the air, water or land; (d) in relation to Part B mobile plant, the direct release of substances or heat from the mobile plant into the air; and (e) in relation to (i) a waste operation not falling within heads (a)-(d) above; or (ii) a mining waste operation, the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources related to the operation into the air, water or land: reg 2(1) (definition amended by SI 2009/1799). As to the meanings of 'Part A installation', 'Part B installation', 'Part A mobile plant' and 'Part B mobile plant'; and 'waste operation' see PARA 663 note 1.

14 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 23(1). However reg 23 does not apply in relation to a Part B installation or Part B mobile plant: reg 23(2).

If the operator is already required to take the steps mentioned in reg 23(1) under the environmental permit, the revocation notice must specify the regulator's view under reg 23(1) and state that reg 23(4) (see the text and note 15) applies: reg 23(3).

If the operator is not already required to take the steps mentioned in reg 23(1) under the environmental permit, the revocation notice must specify the regulator's view under reg 23(1) and the steps to be taken: reg 23(5). If reg 23(5) applies, unless the regulator issues a certificate stating that it is satisfied that all the steps have been taken, the steps must be treated as if they were conditions of an environmental permit for the purposes of (1) reg 20 (see the text and notes 1-5); (2) reg 36 (see PARA 672); and (3) the offence of failing to comply with or contravening a condition in reg 38(1)(b) (see PARA 674 head (2)): reg 23(6).

15 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 23(4). See notes 9, 14.

16 Is an environmental permit to which the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 24 applies.

17 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 24(2). Regulation 24 applies to (1) an environmental permit for mobile plant; (2) an environmental permit for a Part B installation, except to the extent that it relates to a waste operation; and (3) any part of an environmental permit which relates to an activity falling within Sch 1 Pt 2 Section 5.1 Part A(2) (see PARA 663 note 1): reg 24(1) (amended by SI 2009/1799). As to the meanings of 'waste operation' and 'activity' see PARA 663 note 1.

18 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 24(3).

19 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 24(4). This is subject to reg 24(7): see the text and notes 23, 24.

20 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 24(5).

21 Is under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 24(5).

22 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 24(6).

23 Is the notification under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 24(3): see the text and note 18.

24 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 24(7).

25 Is to which the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, regs 24, 25 apply.

26 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 25(1), (2). Schedule 5 Pt 1 (grant, variation, transfer and surrender of environmental permits) (see PARA 664 note 4) applies in relation to an application to surrender an environmental permit in whole or in part: reg 25(3).

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666. Standard rules.

A rule-making authority¹ may prepare standard rules for such regulated facilities as are described in those rules².

In preparing or revising standard rules the authority must consult (1) such persons or bodies as it considers are representative of the interests of communities likely to be affected by, or persons operating, the regulated facilities described in the rules; and (2) such other persons as it considers are likely to be affected by or have an interest in the rules³. However this duty⁴ does not apply in relation to revisions which comprise only minor administrative changes⁵.

The authority must keep under review all standard rules published by it⁶ and revise those rules when it considers necessary⁷. The authority must publish on its website all standard rules prepared or revised by it⁸.

Where a rule-making authority has published⁹ standard rules¹⁰, at the request of the operator¹¹ of a standard facility¹² the regulator¹³ may include in the environmental permit¹⁴ authorising the facility a term providing that the relevant rules¹⁵ are conditions of the permit¹⁶. If the regulator includes such a term, the relevant rules are conditions of the permit for the purposes of the Environmental Permitting (England and Wales) Regulations 2007¹⁷, but there is no right of appeal¹⁸ in relation to such a condition or the relevant rules¹⁹.

Where the rule-making authority proposes to revise²⁰ standard rules²¹, before the rule-making authority complies with the requirement²² to publish the rules on its website the regulator must notify any operator who holds a relevant environmental permit²³ (a) of the proposed revisions; (b) of the date when the revised rules will be published²⁴; and (c) that on this date the revised rules will become conditions of the environmental permit²⁵. The revised rules take effect when published²⁶.

The rule-making authority may revoke standard rules, but before doing so must consult the persons and bodies referred to heads (1) and (2) above²⁷.

In the case of an environmental permit which includes a standard rules term²⁸ if the standard rules applying by virtue of that term have been revoked by the regulator²⁹, the revoked rules continue to have effect until the regulator varies the permit as below³⁰.

As soon as reasonably practicable after the revocation of the rules, the regulator must vary the permit so as to (i) remove the standard rules term; and (ii) include such alternative conditions as it considers appropriate³¹.

1 'Rule-making authority' means (1) in relation to a regulated facility for which a local authority is the regulator, the appropriate authority, and (2) in relation to any other regulated facility, the Environment Agency: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1). As to the meaning of 'regulated facility' see PARA 663 note 1. As to the meaning of 'appropriate authority' see PARA 662 note 13. As to the Environment Agency see PARA 68 et seq.

'Local authority' means (1) in England outside Greater London a district council; where there is a county council but no district council, the county council; or the Council of the Isles of Scilly; (2) in Greater London the council of a London borough; the Common Council of the City of London; the Sub-Treasurer of the Inner Temple; or the Under-Treasurer of the Middle Temple; (3) in Wales a county council; or a county borough council: regs 2(1), 6(1). Where a port health authority has been constituted for a port health district by an order under the Public Health (Control of Disease) Act 1984 s 2 (see PARA 102) that authority is the local authority for the area covered

by that district in relation to a Part B installation: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 6(2). As to the meaning of 'Part B installation' see PARA 663 note 1.

2 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26(1). A range of guidance documents on policy and regulatory interpretation on environmental permitting are available on the Environment Agency website which was, at the date this volume states the law, www.environment-agency.gov.uk.

3 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26(2). The duty in reg 26(2) may be satisfied by a consultation carried out partially or wholly before the coming into force of the 2007 Regulations: reg 26(6). The 2007 Regulations came into force on 6 April 2008: see reg 1(1).

4 Ie the duty in Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26(2).

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26(3).

6 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26.

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26(4).

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26(5). Such preparation or revision is under reg 26.

9 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26(5).

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 27(1).

11 As to the meaning of 'operator' see PARA 664 note 1.

12 As to the meaning of 'standard facility' see PARA 664 note 12.

13 As to the meaning of 'regulator' see PARA 662 note 13.

14 As to the meaning of 'environmental permit' see PARA 664.

15 For these purposes, 'relevant rules' means the standard rules which apply to the standard facility: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 27(4).

16 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 27(2).

17 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538.

18 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31: see PARA 667.

19 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 27(3).

20 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26(4): see the text and note 7.

21 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 28(1).

22 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 26(5): see the text and note 8.

23 For these purposes, 'relevant environmental permit' means an environmental permit which will be affected by the proposed revisions: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 28(5).

24 The date must not be less than three months from the date the notification is served: see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 28(2). However, the authority may publish the revised rules before three months from the date the notification is served if the revisions comprise only minor administrative changes: reg 28(3).

25 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 28(2).

26 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 28(4). The reference is to publication under reg 26(5): see the text and note 8.

27 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 29. The reference is to persons and bodies referred to in reg 26(2).

28 For these purposes, 'standard rules term' means a term of the type mentioned in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 27(2) (see the text and notes 11-16): reg 30(4).

29 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 30(1).

30 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 30(2). The reference is to reg 30(3).

31 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 30(3).

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667. Appeals to an appropriate authority.

The following persons may appeal to the appropriate authority¹:

- 1605 (1) a person whose application for the grant of an environmental permit², to vary an environmental permit, to transfer an environmental permit in whole or in part, or to surrender an environmental permit in whole or in part, is refused³;
- 1606 (2) a person who is aggrieved by an environmental permit condition imposed following an application for the grant of an environmental permit, following an application to vary an environmental permit, pursuant to a regulator-initiated variation, or to take account of the transfer in whole or in part or the partial surrender of an environmental permit⁴;
- 1607 (3) a person who is aggrieved by the deemed withdrawal of a duly-made application⁵;
- 1608 (4) a person who is aggrieved by a decision not to authorise the closure procedure mentioned in certain Directive provisions⁶;
- 1609 (5) a person on whom a revocation notice⁷, enforcement notice⁸, suspension notice⁹, mining waste facility closure notice¹⁰ or landfill closure notice¹¹ is served¹².

Heads (1) to (5) above¹³ do not apply (a) where the relevant decision or notice implements a direction of the appropriate authority given under certain provisions¹⁴; or (b) where an application for the grant or variation of an environmental permit in relation to a Category A mining waste facility¹⁵ that is an existing mining waste facility¹⁶ is refused¹⁷.

When determining an appeal in respect of a decision the appropriate authority has the same powers as the regulator¹⁸ had when making the decision¹⁹.

There are further provisions which have effect in relation to the making and determination of appeals²⁰.

On determining an appeal²¹ in respect of a notice the appropriate authority (i) may quash or affirm the notice; and (ii) if it affirms, may do so in its original form or with such modifications as it thinks fit²².

On the determination of an appeal against a decision, unless the appropriate authority affirms the decision the authority must direct the regulator to give effect to its determination when sending a copy of it to the regulator²³.

An appeal²⁴ does not have the effect of suspending the decision or notice in question²⁵. However where an appeal is brought against a revocation notice, the revocation does not take effect until the final determination or the withdrawal of the appeal²⁶.

1 As to the meaning of 'appropriate authority' see PARA 662 note 13.

2 As to the meaning of 'environmental permit' see PARA 664.

3 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(1)(a). As to such applications see PARA 665.

- 4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(1)(b). As to such applications see PARA 665. As to the meaning of 'regulator-initiated variation' see PARA 665 note 4.
- 5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(1)(c). The reference is to an application under Sch 5 para 4(2): see generally PARA 664 note 4.
- 6 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(1)(d) (substituted by SI 2009/1799). The reference is to (1) EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) on the landfill of waste art 13 after a request referred to in art 13(a)(ii) (see generally PARA 43); or (2) European Parliament and EC Council Directive 2006/21 (OJ L102 11.4.2006 p 15) on the management of waste from extractive industries and amending Directive 2004/35 art 12 after a request referred to in art 12(2)(b) (see generally PARA 45).
- 7 As to the meaning of 'revocation notice' see PARA 665 note 9.
- 8 As to the meaning of 'enforcement notice' see PARA 672.
- 9 As to the meaning of 'suspension notice' see PARA 673.
- 10 As to the meaning of 'mining waste facility closure notice' see PARA 674 note 5.
- 11 As to the meaning of 'landfill closure notice' see PARA 674 note 6.
- 12 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(1)(e) (amended by 2009/1799). The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(1) (e) does not apply to the extent that a revocation notice or suspension notice is served because of a failure to pay a charge prescribed in a scheme made under reg 65(1) (see PARA 691) in respect of the subsistence of an environmental permit: reg 31(3). As to the meaning of 'regulated facility' see PARA 663 note 1. As to the meaning of 'operator' see PARA 664 note 1. As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.
- 13 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(1).
- 14 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 61(1) (see PARA 688), reg 62(1) (see PARA 688), reg 62(6) (see PARA 688) or reg 31(4) (see the text and notes 18, 19).
- 15 As to the meaning of 'Category A mining waste facility' see PARA 663 note 2.
- 16 As to the meaning of 'existing mining waste facility' see PARA 663 note 2.
- 17 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(2) (substituted by SI 2009/1799). The reference is to a refusal pursuant to the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 18B para 14(2): see generally PARA 671 note 15.
- 18 As to the meaning of 'regulator' see PARA 662 note 13.
- 19 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(4).
- 20 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(5). The reference is to the making and determination of appeals under reg 31. As to such further provisions see Sch 6 (appeals to the appropriate authority). The following matters are covered: making an appeal (see Sch 6 para 2); time limit for making an appeal (see Sch 6 para 3 (amended by SI 2009/1799)); notice to affected and interested persons (see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 6 para 4); hearing before an appointed person (see Sch 6 para 5); notice of determination of an appeal (see Sch 6 para 6); and procedure following the quashing of a determination of an appropriate authority (see Sch 6 para 7).
- 21 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(1): see heads (1)-(5) in the text.
- 22 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(6).
- 23 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(7). The reference is to Sch 6 para 6(2): see generally note 20.
- 24 See note 21.
- 25 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(8).
- 26 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 31(9).

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(iii) Discharge of Functions in relation to a Regulated Facility

668. Discharge of functions.

Functions in relation to a Part A(1) installation¹ or Part A(1) mobile plant² are exercisable by the Environment Agency³.

Functions in relation to a Part A(2) installation⁴ or a Part B installation⁵ are exercisable by the local authority⁶ in whose area the installation⁷ is or will be operated⁸. However functions in relation to a waste operation⁹ carried out at a Part B installation are exercisable by the Environment Agency¹⁰.

If the operator of Part A(2) mobile plant¹¹ or Part B mobile plant¹² has his principal place of business in England and Wales¹³, functions in relation to that plant are exercisable by the local authority in whose area the place of business is¹⁴.

If the operator of Part A(2) mobile plant or Part B mobile plant does not have his principal place of business in England and Wales, functions in relation to that plant are exercisable by (1) the local authority which granted the environmental permit¹⁵ authorising the operation of the plant; or (2) if no permit has been granted, the local authority in whose area the plant is first operated, or is intended to be first operated¹⁶.

Functions in relation to a waste operation which is carried on other than at an installation, or by Part A mobile¹⁷ plant or Part B mobile plant, are exercisable by the Environment Agency¹⁸.

Functions in relation to a mining waste operation¹⁹ are exercisable by the Environment Agency²⁰.

1 As to the meaning of 'Part A(1) installation' see PARA 663 note 1.

2 As to the meaning of 'Part A(1) mobile plant' see PARA 663 note 1.

3 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 32(1). As to the Environment Agency see PARA 68 et seq.

4 As to the meaning of 'Part A(2) installation' see PARA 663 note 1.

5 As to the meaning of 'Part B installation' see PARA 663 note 1.

6 As to the meaning of 'local authority' see PARA 666 note 1.

7 As to the meaning of 'installation' see PARA 663 note 1.

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 32(2) (amended by SI 2009/1799).

9 As to the meaning of 'waste operation' see PARA 663 note 1.

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 32(2A) (added by SI 2009/1799).

11 As to the meaning of 'Part A(2) mobile plant' see PARA 663 note 1.

12 As to the meaning of 'Part B mobile plant' see PARA 663 note 1.

- 13 As to the meanings of 'England' and 'Wales' see PARA 1 note 2.
- 14 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 32(3).
- 15 As to the meaning of 'environmental permit' see PARA 664.
- 16 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 32(4).
- 17 As to the meaning of 'Part A mobile plant' see PARA 663 note 1.
- 18 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 32(5).
- 19 As to the meaning of 'mining waste operation' see PARA 663 note 1.
- 20 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 32(6) (added by SI 2009/1799).

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669. Direction to a regulator: discharge of functions by a different regulator.

An appropriate authority¹ may direct² (1) the Environment Agency³ to exercise such local authority functions⁴ as are, and for such period as is, specified in the direction; or (2) a local authority to exercise such Agency functions⁵ as are, and for such period as is, specified in the direction⁶.

A direction⁷ may include such saving and transitional provisions as the appropriate authority considers necessary or expedient⁸. A direction⁹ may be made in respect of a description of regulated facility¹⁰ or a specific regulated facility¹¹.

When giving such a direction¹² the appropriate authority must notify the persons below¹³ of the direction and publish the direction on its website¹⁴. The persons are (a) the Environment Agency; and (b) any local authority or other person who in the appropriate authority's opinion are affected by the direction¹⁵. An appropriate authority must not comply with this duty¹⁶ in a case where the authority considers that to do so would be contrary to the interests of national security¹⁷.

1 As to the meaning of 'appropriate authority' see PARA 662 note 13.

2 A power to give a direction includes a power to vary or revoke it: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(3). As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

3 As to the Environment Agency see PARA 68 et seq.

4 For these purposes, 'local authority functions' means functions which are exercisable by a local authority by virtue of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 32 (see PARA 668) or Sch 2 para 2 (see PARA 663 note 1) (ignoring any direction under reg 33): reg 33(8). As to the meaning of 'local authority' see PARA 666 note 1.

5 For these purposes, 'Agency functions' means functions which are exercisable by the Environment Agency by virtue of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 32 (see PARA 668) or Sch 2 para 2 (see PARA 663 note 1) (ignoring any direction under reg 33): reg 33(8).

6 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 33(1). A direction under reg 33(1)(b) (see head (2) in the text) may not be made in relation to (1) a waste operation carried out other than at an installation or by means of mobile plant; (2) a mining waste operation: reg 33(4) (substituted by SI 2009/1799). As to the meaning of 'waste operation' see PARA 663 note 1. As to the meaning of 'installation' see PARA 663 note 1. As to the meaning of 'mobile plant' see PARA 663 note 1. As to the meaning of 'mining waste operation' see PARA 663 note 1.

7 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 33.

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 33(2).

9 See note 7.

10 As to the meaning of 'regulated facility' see PARA 663 note 1.

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 33(3).

12 See note 7.

13 Ie in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 33(6).

- 14 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 33(5).
- 15 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 33(6).
- 16 le a duty under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 33(5).
- 17 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 33(7).

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670. Review of environmental permits and inspection of regulated facilities.

The regulator¹ must periodically review environmental permits².

The regulator must make appropriate periodic inspections of regulated facilities³.

1 As to the meaning of 'regulator' see PARA 662 note 13.

2 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 34(1).

3 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 34(2). As to the meaning of 'regulated facility' see PARA 663 note 1.

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671. Provision in relation to types of regulated facility.

Schedules to the Environmental Permitting (England and Wales) Regulations 2007¹ contain provision in relation to types of regulated facility². Provision is made in relation to the following:

- 1610 (1) Part A installations and Part A mobile plant³;
- 1611 (2) Part B installations and Part B mobile plant⁴;
- 1612 (3) waste operations⁵;
- 1613 (4) landfill⁶;
- 1614 (5) waste motor vehicles⁷;
- 1615 (6) waste electrical and electronic equipment⁸;
- 1616 (7) waste incineration⁹;
- 1617 (8) SED installations¹⁰;
- 1618 (9) certain combustion plants¹¹;
- 1619 (10) asbestos¹²;
- 1620 (11) titanium dioxide¹³;
- 1621 (12) petrol vapour recovery¹⁴;
- 1622 (13) waste batteries and accumulators¹⁵; and
- 1623 (14) mining waste operations¹⁶.

1 The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Schs 7-18B.

2 The schedules have effect: see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35 (amended by SI 2009/890; and SI 2009/1799). As to the meaning of 'regulated facility' see PARA 663 note 1.

3 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(a); and Sch 7 (amended by SI 2009/1799). As to the meanings of 'Part A installation' and 'Part A mobile plant' see PARA 663 note 1. The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 7 covers the following matters: application (see Sch 7 para 1); interpretation (see Sch 7 para 2 (as so amended)); exercise of regulator's functions (general) (see Sch 7 para 3); applications for environmental permit (see Sch 7 para 4); exercise of relevant functions (see Sch 7 para 5 (as so amended)); public participation (see Sch 7 para 6); review of environmental permits (see Sch 7 para 7) and development in best available techniques (see Sch 7 para 8 (as so amended)).

4 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(b); and Sch 8 (amended by SI 2009/1799). As to the meanings of 'Part B installation' and 'Part B mobile plant' see PARA 663 note 1. The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 8 covers the following matters: application (see Sch 8 para 1); interpretation (see Sch 8 para 2 (as so amended)); exercise of regulator's functions (general) (see Sch 8 para 3); applications for environmental permit (see Sch 8 para 4 (as so amended)); exercise of relevant functions (see Sch 8 para 5 (as so amended)); review of environmental permits (see Sch 8 para 6) and developments in best available techniques (see Sch 8 para 7 (as so amended)).

5 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(c); and Sch 9. As to the meaning of 'waste operation' see PARA 663 note 1. Schedule 9 covers the following matters: application (see Sch 9 para 1); interpretation (see Sch 9 para 2); grant of an environmental permit (requirement for prior planning permission) (see Sch 9 para 2); exercise of relevant functions (all waste operations) (see Sch 9 para 3); and exercise of relevant functions (see Sch 9 para 4).

6 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(d); and Sch 10 (amended by SI 2009/1799). 'Landfill' has the meaning given in EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) on the landfill of waste art 2(g) (see generally PARA 43), but does not include any operation

excluded from the scope of that Directive by art 3(2): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1) (definition amended by SI 2009/1799). The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 10 covers the following matters: application (see Sch 10 para 1 (as so amended)); interpretation (see Sch 10 para 2); application for an environmental permit (see Sch 10 para 3); inspection prior to operation (see Sch 10 para 4); exercise of relevant functions (see Sch 10 para 5); interpretation of EC Council Directive 99/31 (OJ L182, 16.7.99, p 1) and EC Council Decision 2003/33 (OJ L11, 16.1.2003, p 27) on the criteria and procedures for the acceptance of waste at landfills Annex for the exercise of relevant functions (see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 10 paras 7-9); closure of a landfill (see Sch 10 para 10); and surrender applications (see Sch 10 para 11).

7 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(e); and Sch 11. As to the meaning of 'waste' see PARA 663 note 1. Schedule 11 covers the following matters: application (see Sch 11 para 1); interpretation (see Sch 11 para 2); and exercise of relevant functions (see Sch 11 para 3).

8 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(f); and Sch 12. As to the meaning of 'WEEE' see PARA 663 note 1. Schedule 12 covers the following matters: application (see Sch 12 para 1); interpretation (see Sch 12 para 2); applications for an environmental permit (see Sch 12 para 3); and exercise of relevant functions (see Sch 12 para 4).

9 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(g); and Sch 13. Sch 13 covers the following matters: application (see Sch 13 para 1); interpretation (see Sch 13 para 2); applications for environmental permit (see Sch 13 para 3); and exercise of relevant functions (see Sch 13 para 4).

10 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(h); and Sch 14. 'SED installation' means (1) a stationary technical unit where one or more SED activities are carried on; and (2) any other location on the same site where any other directly associated activities are carried on: reg 2(1). As to the meaning of 'SED activity' see PARA 663 note 1. As to the meaning of 'directly associated activity' see PARA 663 note 1. Sch 14 covers the following matters: application (see Sch 14 para 1); interpretation (see Sch 14 para 2); and exercise of relevant functions (see Sch 14 para 3).

11 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(i); and Sch 15. Sch 15 covers the following matters: application (see Sch 15 para 1); interpretation (see Sch 15 para 2); and exercise of relevant functions (see Sch 15 para 3).

12 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(j); and Sch 16. Sch 16 covers the following matters: application (see Sch 16 para 1); interpretation (see Sch 16 para 2); and exercise of relevant functions (see Sch 16 para 3).

13 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(k); and Sch 17. Sch 17 covers the following matters: application (see Sch 17 para 1); interpretation (see Sch 17 para 2); and exercise of relevant functions (see Sch 17 para 3).

14 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(l); and Sch 18. Sch 18 covers the following matters: application (see Sch 18 para 1); interpretation (see Sch 18 para 2); and exercise of relevant functions (see Sch 18 para 3).

15 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(m); and Sch 18A (both added by SI 2009/890). 'Waste battery or accumulator' has the meaning given by European Parliament and EC Council Directive 2006/66 (OJ L266 26.9.2006 p 1) on batteries and accumulators and waste batteries and accumulators art 3(7) (see generally PARA 37), but does not include any waste which is excluded from the scope of that Directive by art 2(2): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1) (definition added by SI 2009/890). The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 18A covers the following matters: application (see Sch 18A para 1 (as so added)); and exercise of relevant functions (see Sch 18A para 2 (as so added)).

As to further provision in relation to waste batteries and accumulators see reg 68A (added by SI 2009/890). In regard to any environmental permit which (1) immediately before the coming into force of the Waste Batteries and Accumulators Regulations 2009, SI 2009/890 (see PARA 37; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 393) authorised a waste operation which involves treatment of waste batteries or accumulators; and (2) does not require compliance with European Parliament and EC Council Directive 2006/66 (OJ L266 26.9.2006 p 1) on batteries and accumulators and waste batteries and accumulators art 12(2) (see generally PARA 37), the environmental permit must be read as if it contained the following condition: 'Treatment of waste batteries and accumulators must meet the minimum requirements set out in Annex III, Part A of Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC': Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 68A(1), (2) (as so added). For these purposes, 'treatment' has the meaning given in European Parliament and EC Council Directive 2006/66 (OJ L266 26.9.2006 p 1) art 3(10):

Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 68A(3) (as so added). As to the meaning of 'environmental permit' see PARA 664.

16 See the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 35(n); and Sch 18B (both added by SI 2009/1799). As to the meaning of 'mining waste operation' see PARA 663 note 1. The Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 18B covers the following matters: application (see Sch 18B para 1 (as so added)); interpretation (see Sch 18B para 2 (as so added)); applications for an environmental permit (see Sch 18B para 3 (as so added)); review of environmental permits (see Sch 18B para 4 (as so added)); classification of mining waste facilities (see Sch 18B para 5 (as so added)); inspections (see Sch 18B para 6 (as so added)); exercise of relevant functions (see Sch 18B para 7 (as so added)); public participation (see Sch 18B para 8 (as so added)); derogations from requirements (see Sch 18B para 9 (as so added)); closure of a mining waste facility (see Sch 18B para 10 (as so added)); inventory of closed mining waste facilities (see Sch 18B para 11 (as so added)); developments in best available techniques (see Sch 18B para 12 (as so added)); planning permission requirements and conditions (see Sch 18B para 13 (as so added)); applications for an environmental permit for a Category A mining waste facility (see Sch 18B para 14 (as so added)).

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(iv) Enforcement and Offences

672. Enforcement notices.

If the regulator¹ considers that an operator² has contravened, is contravening, or is likely to contravene an environmental permit³ condition⁴, the regulator may serve a notice on him (an 'enforcement notice')⁵.

An enforcement notice must (1) state the regulator's view⁶; (2) specify the matters constituting the contravention or making a contravention likely; (3) specify the steps that must be taken to remedy the contravention or to ensure that the likely contravention does not occur; and (4) specify the period within which those steps must be taken⁷.

Steps that may be specified in an enforcement notice include steps (a) to make the operation of a regulated facility⁸ comply with the environmental permit conditions; and (b) to remedy the effects of pollution⁹ caused by the contravention¹⁰.

The regulator may withdraw an enforcement notice at any time by further notice served on the operator¹¹.

1 As to the meaning of 'regulator' see PARA 662 note 13.

2 As to the meaning of 'operator' see PARA 664 note 1.

3 As to the meaning of 'environmental permit' see PARA 664.

4 As to permit conditions see PARAS 664, 666.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, regs 2(1), 36(1). As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

6 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 36(1): see the text and notes 1-5.

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 36(2).

8 As to the meaning of 'regulated facility' see PARA 663 note 1.

9 As to the meaning of 'pollution' see PARA 665 note 13.

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 36(3).

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 36(4).

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673. Suspension notices.

If the regulator¹ considers that the operation of a regulated facility² under an environmental permit³ involves a risk of serious pollution⁴, it may serve a notice on the operator (a 'suspension notice')⁵. This is the case⁶ whether or not the manner of operating the facility which involves the risk is subject to or contravenes an environmental permit condition⁷.

A suspension notice must (1) state the regulator's view⁸; (2) specify (a) the risk of serious pollution⁹; (b) the steps that must be taken to remove that risk; and (c) the period within which the steps must be taken; (3) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn; and (4) if the environmental permit continues to authorise an operation, state any steps¹⁰ that are to be taken when carrying on that operation¹¹.

If a suspension notice is served the environmental permit ceases to have effect to the extent stated in the notice¹².

The regulator (i) may withdraw a suspension notice at any time by further notice served on the operator; and (ii) must withdraw a notice when satisfied that the steps specified in it have been taken¹³.

1 As to the meaning of 'regulator' see PARA 662 note 13.

2 As to the meaning of 'regulated facility' see PARA 663 note 1.

3 As to the meaning of 'environmental permit' see PARA 664.

4 As to the meaning of 'pollution' see PARA 665 note 13.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, regs 2(1), 37(1). As to the meaning of 'operator' see PARA 664 note 1. As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

6 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 37(1) applies.

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 37(2). As to permit conditions see PARAS 664, 666.

8 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 37(1).

9 Ie mentioned in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 37(1).

10 Ie in addition to those already required to be taken by the environmental permit conditions.

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 37(3).

12 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 37(4).

13 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 37(5).

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674. Offences, penalties and defence.

It is an offence for a person:

- 1624 (1) to contravene, or knowingly cause or knowingly permit the contravention of, the provision requiring an environmental permit¹;
- 1625 (2) to fail to comply with or to contravene an environmental permit condition²;
- 1626 (3) to fail to comply with the requirements of an enforcement notice³, a suspension notice⁴, a mining waste facility closure notice⁵ or a landfill closure notice⁶;
- 1627 (4) to fail to comply with a notice⁷ requiring the provision of information, without reasonable excuse⁸;
- 1628 (5) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made (a) in purported compliance with a requirement to provide information imposed by or under a provision of the Environmental Permitting (England and Wales) Regulations 2007⁹; or (b) for the purpose of obtaining the grant of an environmental permit to himself or another person, or the variation, transfer in whole or in part, or surrender in whole or in part of an environmental permit¹⁰;
- 1629 (6) intentionally to make a false entry in a record required to be kept under an environmental permit condition¹¹;
- 1630 (7) with intent to deceive (a) to forge or use a document issued or authorised to be issued or required for any purpose under an environmental permit condition; or (b) to make or have in his possession a document so closely resembling such a document as to be likely to deceive¹².

It is an offence for an establishment or undertaking:

- 1631 (i) to fail to comply with certain parts of the provision on record-keeping in regard to exempt waste operations¹³; or
- 1632 (ii) intentionally to make a false entry in a record required to be kept under those parts of the latter provision¹⁴.

If an offence committed by a person¹⁵ is due to the act or default of some other person, that other person is also guilty of the offence and liable to be proceeded against and punished accordingly¹⁶.

A person guilty of an offence under head (1), (2) or (3) above¹⁷ is liable to a fine or imprisonment or both¹⁸.

A person guilty of an offence under head (4), (5), (6) or (7) above¹⁹ is liable to a fine or imprisonment or both²⁰.

An establishment or undertaking guilty of an offence under head (i) or (ii) above²¹ is liable to a fine²².

It is a defence for a person charged with an offence under head (1), (2) or (3) above²³ to prove that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where (A) he took all such steps as were reasonably practicable in the circumstances for minimising pollution²⁴; and (B) particulars of the acts were furnished to the regulator as soon as reasonably practicable after they were done²⁵.

If an offence committed under the Environmental Permitting (England and Wales) Regulations 2007²⁶ by a body corporate is shown to have been committed with the consent or connivance of an officer²⁷, or to be attributable to any neglect on his part, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly²⁸.

1 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(a). The reference is to reg 12: see PARA 663. As to the meaning of 'environmental permit' see PARA 664.

2 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(b). As to permit conditions see PARAS 664, 666.

3 As to the meaning of 'enforcement notice' see PARA 672. As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

4 As to the meaning of 'suspension notice' see PARA 673.

5 'Mining waste facility closure notice' means a closure notice served under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 18B para 10 (see PARA 671 note 15): reg 2(1).

6 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(c) (amended by SI 2009/1799). 'Landfill closure notice' means a closure notice served under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 10 para 10 (see PARA 671 note 6): reg 2(1).

If the regulator considers that proceedings against a person for an offence under reg 38(1)(c) would afford an ineffectual remedy against the person, the regulator may take proceedings in the High Court for the purpose of securing compliance with the enforcement notice, suspension notice, mining waste facility closure notice or landfill closure notice: reg 42 (amended by SI 2009/1799). As to the meaning of 'regulator' see PARA 662 note 13.

7 I.e. under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 60(2): see PARA 687.

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(d).

9 I.e. the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538.

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(e). As to grant of an environmental permit see PARA 664. As to variation, transfer and revocation of an environmental permit see PARA 665.

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(f).

12 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(g).

13 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(2)(a) (amended by SI 2009/3381). The reference to certain parts of the provision on record-keeping is a reference to the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 2 para 12(3) or para 12(4): see PARA 663 note 1.

14 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(2)(b) (amended by SI 2009/3381). See note 13.

15 I.e. under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38.

16 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(3).

17 I.e. under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(a), (b) or (c).

18 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 39(1). Such a person is liable (1) on summary conviction to a fine not exceeding £50,000 or imprisonment for a term not exceeding 12 months, or to both; or (2) on conviction on indictment to a fine or imprisonment for a term not exceeding five years, or to both: see reg 39(1). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) (general limit on magistrates' courts' power to impose imprisonment) (not yet in force), the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 39(1)(a) (see head (1) above) has effect as if for '12 months' there were substituted '6 months': reg 39(2) (amended by the Climate Change Act 2008 s 88(2)).

19 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(d), (e), (f) or (g).

20 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 39(3). Such a person is liable (1) on summary conviction to a fine not exceeding the statutory maximum; or (2) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or to both: see reg 39(3). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

21 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(2).

22 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 39(4). Such a person is liable on summary conviction to a fine not exceeding level 2 on the standard scale: see reg 39(4). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

23 See note 17.

24 As to the meaning of 'pollution' see PARA 665 note 13.

25 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 40.

26 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538.

27 For these purposes, 'officer', in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 41(3).

28 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 41(1). If the affairs of a body corporate are managed by its members, reg 41(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body: reg 41(2).

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675. Admissibility of evidence; power to order cause of offence to be remedied.

Where, pursuant to an environmental permit¹ granted by a local authority², an entry is required to be made in any record as to the observance of a condition³ of the environmental permit and the entry has not been made, that fact is admissible as evidence that the condition has not been observed⁴.

Where a person is convicted of any of certain offences⁵ in respect of a matter which appears to the court to be a matter which it is in his power to remedy⁶, in addition to or instead of a punishment imposed⁷ the court may order the person to take such steps for remedying the matter within such period as may be specified in the order⁸. The period may be extended, or further extended, by order of the court on an application made before the end of the period or the extended period, as the case may be⁹. If a person is ordered to remedy a matter, that person is not liable¹⁰ in respect of that matter during the period or the extended period¹¹.

1 As to the meaning of 'environmental permit' see PARA 664.

2 As to the meaning of 'local authority' see PARA 666 note 1.

3 As to permit conditions see PARAS 664, 666.

4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 43.

5 I.e. an offence under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1), (b) or (c); see PARA 674 heads (1)-(3).

6 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 44(1).

7 I.e. under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 39: see PARA 674.

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 44(2).

9 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 44(3).

10 I.e. under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38: see PARA 674.

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 44(4).

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(v) Public Registers

676. Duty of the regulator to maintain a public register.

The regulator¹ must maintain a register (a 'public register') containing certain information².

A local authority³ must also include on its public register any information which is included on the Environment Agency's⁴ public register in respect of a regulated facility⁵ (other than mobile plant⁶) (1) for which the Agency is the regulator; and (2) which is in the area of the authority⁷.

The regulator must enter information on its public register as soon as reasonably practicable after it comes within the regulator's possession⁸.

Where information of any description is excluded from any public register as confidential information⁹, a statement must be entered in the register indicating the existence of information of that description¹⁰.

The regulator must (a) make its public register available for public inspection at all reasonable times, free of charge; and (b) enable members of the public to obtain copies of entries on its public register on payment of a reasonable charge¹¹. A public register may be kept in any form¹².

1 As to the meaning of 'regulator' see PARA 662 note 13.

2 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, regs 2(1), 46(1). Regulation 46(1) is subject to reg 47 (see PARA 677) and reg 48 (see PARA 678): see reg 46(1). However, nothing in reg 46(1) requires a public register to contain information relating to criminal proceedings, or anything which is the subject matter of criminal proceedings, before those proceedings are finally disposed of: reg 46(2). For these purposes, 'criminal proceedings' includes prospective criminal proceedings: reg 46(3).

The information referred to in reg 46(1) is in Sch 19 para 1. A public register must contain a copy of:

- 39 (1) every application for the grant of an environmental permit, to vary an environmental permit, to transfer an environmental permit in whole or in part, or to surrender an environmental permit in whole or in part (Sch 19 para 1(1)(a));
- 40 (2) every notice requesting further information under Sch 5 para 4(1) (see PARA 666 note 4) (Sch 19 para 1(1)(b));
- 41 (3) all representations made in respect of an application for an environmental permit or to vary an environmental permit (Sch 19 para 1(1)(c));
- 42 (4) every environmental permit, variation, transfer in whole or in part, or surrender in whole or in part granted or made by the regulator (Sch 19 para 1(1)(d));
- 43 (5) every determination or decision notified under Sch 5 para 17(2)(a) (see PARA 666 note 4) (Sch 19 para 1(1)(e));
- 44 (6) every enforcement notice, revocation notice, suspension notice, landfill closure notice, mining waste facility closure notice or notice withdrawing such a notice served by the regulator (Sch 19 para 1(1)(f) (amended by SI 2009/1799));

- 45 (7) in relation to an appeal to an appropriate authority, every notice of appeal, document relating to the appeal, representation made in respect of the appeal, and determination of the authority, including any report accompanying that determination (Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 19 para 1(1)(g));
- 46 (8) all monitoring information obtained by the regulator as a result of its own monitoring, by virtue of any environmental permit condition, or under reg 60 (see PARA 687) (Sch 19 para 1(1)(h));
- 47 (9) all other information given to the regulator in compliance with an environmental permit condition, an enforcement notice, a suspension notice, a landfill closure notice, reg 60 (see PARA 687), or a mining waste facility closure notice (Sch 19 para 1(1)(i) (amended by SI 2009/1799));
- 48 (10) every report published by the regulator relating to an assessment of the environmental consequences of the operation of an installation (Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 19 para 1(1)(j));
- 49 (11) every direction given to the regulator or the exemption registration authority by an appropriate authority under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, other than a direction given under reg 47 (see PARA 677) or Sch 2 para 11 (see PARA 663 note 1) (Sch 19 para 1(1)(k) (substituted by SI 2009/3381)).

As to the meaning of 'environmental permit' see PARA 664. As to variation, transfer and surrender of an environmental permit see PARA 665. As to the meaning of 'enforcement notice' see PARA 672. As to the meaning of 'suspension notice' see PARA 673. As to the meaning of 'landfill closure notice' see PARA 674 note 6. As to the meaning of 'mining waste facility closure notice' see PARA 674 note 5. As to the meaning of 'appropriate authority' see PARA 662 note 13. As to the meaning of 'exemption registration authority' see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1), Sch 2 para 2; and generally see PARA 663 note 1. In certain circumstances it is the Environment Agency as to which see PARA 68 et seq. As to appeals see PARA 667. As to environmental permit conditions see PARAS 664, 666. As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

A public register must also contain:

- 50 (a) details of any conviction or formal caution for an offence under reg 38 (see PARA 674) in respect of an environmental permit granted by the regulator or a failure to apply to the regulator for an environmental permit (Sch 19 para 1(2)(a));
- 51 (b) an inventory of closed mining waste facilities as required under European Parliament and EC Council Directive 2006/21 (OJ L102 11.4.2006 p 15) on the management of waste from extractive industries and amending Directive 2004/35 art 20 (see generally PARA 45) (Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 19 para 1(2)(aa) (added by SI 2009/1799));
- 52 (c) a list identifying all waste incineration installations (as to which see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 13; and PARA 671 note 9) which have a capacity of less than two tonnes per hour, and are the subject of an environmental permit containing conditions which give effect to European Parliament and EC Council Directive 2000/76 (OJ L332, 28.12.2000, p 91) on the incineration of waste (see PARA 41) (Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Sch 19 para 1(2)(b), (5)); and
- 53 (d) details of all fees and charges paid to the local authority pursuant to a scheme under reg 65 (see PARA 691), and the total expenditure of the authority in exercising its functions under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, in respect of permits granted by the authority (Sch 19 para 1(2)(c)).

The regulator may omit a representation referred to in Sch 19 para 1(1) (see heads (1)-(11) above) from its public register at the request of the person making the representation, but it must then include in the public register a statement that a representation was made and was the subject of such a request: Sch 19 reg 1(3).

If the regulator omits monitoring information referred to in Sch 19 para 1(1) from its public register on the grounds that it is commercially or industrially confidential the regulator must include in the public register a statement indicating whether or not there has been compliance with any environmental permit condition related to that monitoring information and requiring compliance with emission limit values: Sch 19 reg 1(4).

A regulator is not required to keep in its public register information which is no longer relevant for the purposes of public participation required under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538: Sch 19 reg 2.

A regulator must remove details of any formal caution from its public register five years after the caution was given: Sch 19 reg 3.

3 As to the meaning of 'local authority' see PARA 666 note 1.

4 As to the Environment Agency see PARA 68 et seq.

5 As to the meaning of 'regulated facility' see PARA 663 note 1.

6 As to the meaning of 'mobile plant' see PARA 663 note 1.

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 46(4). However (1) reg 46(4) does not apply to a port health authority; and (2) every local authority whose area adjoins that of a port health authority must comply with reg 46(4) as if the port health authority had not been constituted: reg 46(5). As to port health authorities see PARA 102.

The Agency must provide the local authority with the information necessary to comply with reg 46(4): reg 46(6).

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 46(7).

9 Is excluded under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 48: see PARA 678.

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 46(7A) (added by SI 2009/1799).

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 46(8).

12 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 46(9).

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677. Exclusion from public registers of information affecting national security.

The appropriate authority¹ may direct² the regulator³ that in the interests of national security specified information or a specified description of information must be excluded from a public register⁴. The regulator must notify the appropriate authority of any information it excludes from a public register pursuant to such a direction⁵.

The appropriate authority may direct the regulator that in the interests of national security a specified description of information must be referred to the authority for its determination before the information is included on a public register⁶.

A person may give a notice to the appropriate authority stating that in his opinion the inclusion of information on a public register would be contrary to the interests of national security⁷. Such a notice⁸ must specify the information and indicate its apparent nature⁹. A person giving such a notice must at the same time notify the regulator¹⁰. The regulator must not include information so notified on a public register unless the appropriate authority determines that it may be included¹¹.

1 As to the meaning of 'appropriate authority' see PARA 662 note 13.

2 As to directions generally see PARA 669 note 2.

3 As to the meaning of 'regulator' see PARA 662 note 13.

4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 47(1). As to the meaning of 'public register' see PARA 676.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 47(2).

6 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 47(3).

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 47(4). As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

8 le under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 47(4).

9 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 47(5).

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 47(6).

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 47(7).

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678. Exclusion from public registers of confidential information and relevant procedure.

The regulator¹ must exclude information from a public register², unless one of the conditions below³ is met, if it (1) considers that the information may be confidential information⁴; or (2) receives notice ('objection notice') from the information subject⁵ which states that he considers the information is confidential information, and gives reasons for that view⁶.

The conditions are that (a) in relation to head (1) above, the regulator has given the relevant notice⁷ and the information subject has given the relevant notice of consent⁸; (b) in relation to head (1) or head (2) above, a final confidentiality decision⁹ that the information should be included on the register has been made, or the appropriate authority¹⁰ has given a direction¹¹ which requires the information to be included on the register¹².

If the regulator considers that information may be confidential information but has not received an objection notice, it must give notice of that view to the information subject¹³.

The information subject may within 15 working days after the date of the notice given by the regulator¹⁴ (i) give notice to the regulator consenting to the regulator including the information on the register; or (ii) give an objection notice to the regulator¹⁵.

1 As to the meaning of 'regulator' see PARA 662 note 13.

2 As to the meaning of 'public register' see PARA 676.

3 Ie a condition in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, 48(2).

4 For the purposes of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Pt 5 (regs 45-56), 'confidential information' means information that is commercially or industrially confidential in relation to any person: reg 45.

5 For the purposes of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Pt 5 (regs 45-56), 'information subject' means the person to whom information relates: reg 45.

6 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 48(1). For the purposes of Pt 5 (regs 45-56), 'objection notice' means a notice under reg 48(1)(b) (see head (2) in the text): reg 45. As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

7 Ie notice under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 49(1): see the text and note 13.

8 Ie notice of consent under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 49(2)(a): see head (i) in the text.

9 For the purposes of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, Pt 5 (regs 45-56), 'final confidentiality decision' means (1) a determination made in accordance with reg 51 (see PARA 679); (2) a determination under the Environmental Protection Act 1990 s 22(2) (see PARA 180) or s 66(2) (repealed); (3) a determination under the Pollution Prevention and Control (England and Wales) Regulations 2000, SI 2000/1973, reg 31(2) (repealed); or (4) the determination or withdrawal of an appeal in relation to a determination referred to in heads (1)-(3): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 45.

10 As to the meaning of 'appropriate authority' see PARA 662 note 13.

- 11 le a direction under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 56(1): see PARA 683.
- 12 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 48(2).
- 13 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 49(1).
- 14 le under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 49(1).
- 15 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 49(2).

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679. Determination of confidentiality.

The regulator¹ must determine whether information must be included on the public register², or excluded from the public register because it is confidential information³, if (1) having given notice⁴, it does not receive notice of consent⁵; or (2) it receives an objection notice⁶.

When making such a determination⁷, the regulator must comply with the following provisions⁸.

In making the determination, the regulator must (a) take any reasons given in an objection notice into account; (b) apply a presumption in favour of including the information on the public register; and (c) determine to exclude the information from the public register if it considers that (i) the information is commercial or industrial information; (ii) its confidentiality is provided by law to protect a legitimate economic interest; and (iii) in all the circumstances, the public interest in maintaining the confidentiality of the information outweighs the public interest in including it on the register⁹.

However, to the extent that information relates to emissions the regulator must determine to include it on the public register¹⁰.

Nothing in these provisions¹¹ authorises the exclusion from the public register of information contained in or otherwise held with other information excluded from the register unless the information is not reasonably capable of being separated for the purposes of inclusion on the register¹².

1 As to the meaning of 'regulator' see PARA 662 note 13.

2 As to the meaning of 'public register' see PARA 676.

3 As to the meaning of 'confidential information' see PARA 678 note 4.

4 I.e. notice under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 49(1): see PARA 678. As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

5 I.e. in accordance with the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, s 49(2)(c): see PARA 678 head (ii).

6 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 50. As to the meaning of 'objection notice' see PARA 678.

7 I.e. a determination required by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 50.

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 51(1). The reference is to reg 51: see the text and notes 9-12.

9 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 51(2).

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 51(3).

11 I.e. in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 51.

12 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 51(4).

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680. Procedure following a determination of confidentiality.

The regulator¹ must give notice of its determination of confidentiality², the reasons for it and the details of the appeals procedure³ to the information subject within (1) a period of 20 working days beginning with the date its duty to determine confidentiality⁴ arises; or (2) such longer period as it agrees with the information subject⁵.

If the regulator fails to give notice⁶ within the required period⁷, the information subject may give notice to the regulator of that failure, and on such notice (a) the regulator is deemed to have determined that the information must be included on the register; and (b) the deemed determination is subject to the right of appeal⁸.

If the regulator determines that the information must be included on the public register, it must not include the information before the expiry of the period of 15 working days after (i) it has given notice of the determination; or (ii) a notice under heads (a) and (b) above⁹ resulting in a deemed determination is given, but must include it after the expiry of that period if notice of appeal has not been given¹⁰.

1 As to the meaning of 'regulator' see PARA 662 note 13.

2 As to determination of confidentiality see PARA 679. As to general provision made for notices, notifications, certificates, directions or forms see PARA 665 note 9.

3 As to appeals see PARA 681.

4 I.e. its duty under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 50: see PARA 679.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 52(1). As to the meaning of 'information subject' see PARA 678 note 5.

6 I.e. notice under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 52(1).

7 I.e. the period required by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 52(1).

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 52(2). The reference is to the right of appeal under reg 53(1): see PARA 681.

9 I.e. a notice under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 52(2).

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 52(3).

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681. Appeals in relation to confidentiality.

The information subject¹ may give notice of appeal to the appropriate authority² against a determination of confidentiality³ within 15 working days after the regulator⁴ has given notice of it⁵.

A notice of appeal must (1) be in writing; (2) include a statement of the grounds of appeal; (3) state whether the information subject⁶ wishes the appeal to be in the form of a hearing or to be disposed of through written representations; and (4) be copied to the regulator⁷.

If the information subject gives notice of appeal, the regulator must not include the information on the public register⁸ before the appeal is decided⁹.

The appropriate authority (a) may give the information subject and the regulator an opportunity of appearing before and being heard by a person appointed by it; and (b) must do so in a case where the notice of appeal states that the information subject wishes the appeal to be in the form of a hearing¹⁰.

If the appropriate authority allows the appeal, the regulator must exclude the information from the public register¹¹.

If the appropriate authority rejects the appeal or the appeal is withdrawn, the regulator must include the information on the public register¹².

1 As to the meaning of 'information subject' see PARA 678 note 5.

2 As to the meaning of 'appropriate authority' see PARA 662 note 13.

3 I.e. a determination under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 51: see PARA 679.

4 As to the meaning of 'regulator' see PARA 662 note 13.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 53(1). As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

6 As to the meaning of 'information subject' see PARA 678 note 5.

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 53(2).

8 As to the meaning of 'public register' see PARA 676.

9 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 53(3).

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 53(4). A hearing under reg 53(4) is subject to Sch 6 paras 5(2)-(6) and 6 (except Sch 6 para 5(3)(c)) (see generally PARA 667 note 20) as if it was a hearing under Sch 6 para 5(1), save that 'the appellant' must be read as 'the information subject': reg 53(5).

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 54(1).

12 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 54(2).

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682. Reconsideration of confidentiality.

The regulator¹ must cease to treat information as confidential information² at the expiry of (1) a period of four years after the final confidentiality decision³; or (2) such shorter period as is specified in that decision⁴.

However, if the person to whom the information relates gives notice to the regulator before the expiry of that period that he considers that the information remains confidential information, certain provisions apply⁵.

1 As to the meaning of 'regulator' see PARA 662 note 13.

2 As to the meaning of 'confidential information' see PARA 678 note 4.

3 As to the meaning of 'final confidentiality decision' see PARA 678 note 9.

4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 55(1).

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 55(2). Specifically (1) reg 48 (see PARA 678) applies in respect of the information and the regulator must treat the notice as an objection notice; and (2) regs 50-54 (see PARAS 679-681) apply notwithstanding any previous compliance with those regulations in relation to the information: reg 55(2). As to the meaning of 'objection notice' see PARA 678. As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

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683. Directions of the appropriate authority in relation to confidentiality.

The appropriate authority¹ may direct² the regulator³ that specified information, or a specified description of information, must be included on the public register⁴ even though it is confidential information⁵.

However, the appropriate authority must not give such a direction⁶ unless it considers that the public interest in including such information on the register outweighs the public interest in maintaining its confidentiality⁷.

1 As to the meaning of 'appropriate authority' see PARA 662 note 13.

2 As to directions generally see PARA 669 note 2.

3 As to the meaning of 'regulator' see PARA 662 note 13.

4 As to the meaning of 'public register' see PARA 676.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 56(1). As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

6 I.e a direction under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 56(1).

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 56(2).

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(vi) Powers and Functions of the Regulator and the Appropriate Authority

684. Power of the regulator to prevent or remedy pollution.

If the regulator¹ considers that the operation of a regulated facility² under an environmental permit³ involves a risk of serious pollution⁴, it may arrange for steps to be taken to remove that risk⁵.

If the commission of an offence⁶ causes pollution, the regulator may arrange for steps to be taken to remedy the effects of that pollution⁷.

If the regulator intends to arrange for such steps to be taken⁸, it must notify the operator of the steps not less than five working days before they are taken⁹.

If the regulator arranges for steps to be taken¹⁰, it may recover the cost of taking those steps from the operator¹¹.

1 As to the meaning of 'regulator' see PARA 662 note 13.

2 As to the meaning of 'regulated facility' see PARA 663 note 1.

3 As to the meaning of 'environmental permit' see PARA 664.

4 As to the meaning of 'pollution' see PARA 665 note 13.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 57(1). See also generally the European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56) on environmental liability with respect to the prevention and remedying of environmental damage (the 'Environmental Liability Directive'); the Environmental Damage (Prevention and Remediation) Regulations 2009, SI 2009/153; and PARA 5.

6 I.e. an offence under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 38(1)(a), (b) or (c): see PARA 674 heads (1)-(3).

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 57(2).

8 I.e. steps under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 57(2).

9 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 57(3). As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

10 I.e. under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 57.

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 57(4). As to the meaning of 'operator' see PARA 664 note 1. However costs are not recoverable under reg 57(4) (1) if the steps referred to in reg 57(1) are taken and the operator shows that there was no risk of serious pollution; or (2) to the extent that the operator shows that the costs were unnecessarily incurred by the regulator: reg 57(5).

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685. Notices by the Environment Agency in relation to emissions to water.

In regard to Part A installations¹ and Part A mobile plant² for which a local authority³ is the regulator⁴, at any time the Environment Agency⁵ may give notice to the local authority specifying the emission limit values⁶ or the conditions it considers appropriate for preventing or reducing emissions into water from the installation or plant⁷.

If such a notice is issued, the local authority must exercise its functions under the Environmental Permitting (England and Wales) Regulations 2007⁸ to ensure the environmental permit⁹ for the installation or plant includes (1) the emission limit values or conditions specified in the notice; or (2) such stricter limit values or more onerous conditions as the authority thinks fit¹⁰.

1 As to the meaning of 'Part A installation' see PARA 663 note 1.

2 As to the meaning of 'Part A mobile plant' see PARA 663 note 1.

3 As to the meaning of 'local authority' see PARA 666 note 1.

4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 58(1). As to the meaning of 'regulator' see PARA 662 note 13.

5 As to the Environment Agency see PARA 68 et seq.

6 For these purposes, 'emission limit value' means the mass, expressed in terms of specific parameters, concentration or level of an emission, which must not be exceeded during a period of time: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 58(4). As to the meaning of 'emission' see PARA 665 note 13.

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 58(2). As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

8 I.e the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538.

9 As to the meaning of 'environmental permit' see PARA 664.

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 58(3).

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686. Public participation statement by Environment Agency.

The Environment Agency¹ must prepare and publish a statement of its policies for complying with its public participation duties².

In preparing or revising the statement the Agency must consult such persons as it considers are affected by, are likely to be affected by, or have an interest in the statement³.

The Agency must (1) keep the statement under review; (2) revise the statement when it considers necessary; and (3) publish any revised statement⁴.

The Agency must comply with any published statement when exercising certain of its functions⁵.

1 As to the Environment Agency see PARA 68 et seq.

2 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 59(1). For these purposes, 'public participation duties' means the duties in the following provisions: reg 26 (see PARA 666); reg 29 (see PARA 666); Sch 5 paras 6, 8(2) (see generally PARA 664 note 4); reg 59(6).

3 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 59(2). The duty in reg 59(2) may be satisfied by a consultation carried out partially or wholly before the coming into force of the 2007 Regulations (ie 6 April 2008): see reg 59(5).

4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 59(3).

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 59(4). The reference is to functions under reg 26 (see PARA 666), reg 29 (see PARA 666), Sch 2 (see PARA 663 note 1) and Sch 3 (see PARA 663 note 1).

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687. Power to require the provision of information.

For the purposes of discharging its functions under the Environmental Permitting (England and Wales) Regulations 2007¹, an appropriate authority² may, by notice served on a regulator³, require the regulator to provide such information as is specified in the notice⁴.

For the purposes of discharging its functions under the 2007 Regulations, a regulator may, by notice served on any person, require that person to provide such information in such form and within such period as is specified in the notice⁵.

Such a notice⁶ may require a person to provide any information on emissions⁷ where that requirement is reasonable, including the provision of information (1) not in the person's possession; and (2) which would not usually come into the person's possession⁸.

1 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538.

2 As to the meaning of 'appropriate authority' see PARA 662 note 13.

For the purposes of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 60, the discharge by the appropriate authority of (1) an obligation of the United Kingdom under the Community Treaties; or (2) an international obligation of the United Kingdom, must be treated as a function of the authority under the 2007 Regulations: reg 60(4). As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 As to the meaning of 'regulator' see PARA 662 note 13.

4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 60(1). As to general provision made for notices, notifications, certificates, directions or forms see reg 10; and PARA 665 note 9.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 60(2).

6 Ie a notice under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 60(2).

7 As to the meaning of 'emissions' see PARA 665 note 13.

For the purposes of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 60, the compilation of an inventory of emissions (whether or not from a regulated facility) must be treated as a function of the regulator under the 2007 Regulations: reg 60(5). As to the meaning of 'regulated facility' see PARA 663 note 1.

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 60(3).

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688. Directions to a regulator.

An appropriate authority¹ may give directions² to the regulator³ of a general or specific character with respect to the carrying out of its functions under the Environmental Permitting (England and Wales) Regulations 2007⁴.

Without prejudice to the generality of the above power⁵, a direction may direct the regulator to exercise or not to exercise (1) specified powers; (2) its powers in specified circumstances; or (3) its powers in a specified manner⁶.

The regulator must comply with a direction given to it under the 2007 Regulations⁷.

An appropriate authority may give directions to the regulator requiring that a particular application⁸ or class of application be referred to it for determination⁹.

The regulator must (a) inform the applicant of the fact that his application is being referred to the appropriate authority; and (b) forward to the appropriate authority any representations made in respect of the application¹⁰.

When an application is referred to it, the appropriate authority (i) may afford the applicant and the regulator an opportunity of appearing before and being heard by a person appointed by him; and (ii) must do so in any case where a request is duly-made by the applicant or the regulator to be so heard¹¹.

On determining an application referred to it¹² the appropriate authority must give to the regulator a direction as to whether the regulator is to grant the application and, if so, the conditions that are to be attached to the environmental permit¹³.

1 As to the meaning of 'appropriate authority' see PARA 662 note 13.

2 As to directions generally see PARA 669 note 2. As to general provision made for notices, notifications, certificates, directions or forms see PARA 665 note 9.

3 As to the meaning of 'regulator' see PARA 662 note 13.

4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 61(1). The reference is to the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538.

5 Ie without prejudice to the generality of the power in the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 61(1).

6 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 61(2).

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 61(3).

8 For these purposes, 'application' means an application (1) for the grant of an environmental permit; or (2) to vary an environmental permit: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 62(7). As to the meaning of 'environmental permit' see PARA 664. As to the grant of an environmental permit see PARA 664. As to the variation of an environmental permit see PARA 665.

9 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 62(1).

10 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 62(2).

11 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 62(3). A request under reg 62(3)(b) (see head (ii) in the text) must be made in writing within 15 working days of the day the applicant is informed that the application is being referred to the appropriate authority: reg 62(4). A hearing under reg 62(3) is subject to Sch 6 paras 5(2)-5(6), 6 (except Sch 6 para 5(3)(c)) (see generally PARA 667 note 20) as if it was a hearing under Sch 6 para 5(1) with the following modifications (1) 'the appellant' must be read as 'the applicant'; (2) 'the appeal' must be read as 'the application': reg 62(5).

12 Ie an application referred to it under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 62.

13 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 62(6). As to conditions attached to an environmental permit see PARA 664.

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689. Installations outside the United Kingdom.

Where an appropriate authority¹ receives certain information² in relation to the operation of an installation³ outside the United Kingdom⁴ which is likely to have a significant negative effect on the environment of England or Wales⁵, for the purpose of compliance⁶ the appropriate authority must direct the Environment Agency⁷ to take such steps as it considers appropriate to (1) bring the information to the attention of persons likely to be affected by the operation of the installation; and (2) provide them with an opportunity to comment on the information⁸.

1 As to the meaning of 'appropriate authority' see PARA 662 note 13.

2 Ie information pursuant to European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) concerning integrated pollution prevention and control (Codified version) art 18(1): see generally PARA 6.

3 As to the meaning of 'installation' see PARA 663 note 1.

4 As to the meaning of 'United Kingdom' see PARA 1 note 2.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 63(1) (amended by SI 2009/1799).

6 Ie for the purpose of complying with European Parliament and EC Council Directive 2008/1 (OJ L24, 29.1.2008, p 8) art 18(2): see generally PARA 6.

7 As to the Environment Agency see PARA 68 et seq.

8 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 63(2) (amended by SI 2009/1799). As to general provision made for notices, notifications, certificates, directions or forms see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 10; and PARA 665 note 9.

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690. Guidance to regulators and exemption registration authorities.

An appropriate authority¹ may issue guidance to a regulator² or exemption registration authority³ with respect to the exercise of its functions under the Environmental Permitting (England and Wales) Regulations 2007⁴.

In the exercise of those functions the regulator or exemption registration authority must have regard to the guidance⁵.

1 As to the meaning of 'appropriate authority' see PARA 662 note 13.

2 As to the meaning of 'regulator' see PARA 662 note 13.

3 As to the meaning of 'exemption registration authority' see the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 2(1), Sch 2 para 2; and generally see PARA 663 note 1. In certain circumstances it is the Environment Agency as to which see PARA 68 et seq.

4 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 64(1). The reference is to the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538.

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 64(2).

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691. Fees and charges in relation to local authorities.

An appropriate authority¹ may make, and from time to time revise, a scheme prescribing (1) fees payable in respect of applications for the grant of an environmental permit², to vary an environmental permit³, to transfer an environmental permit in whole or in part⁴, to surrender an environmental permit in whole or in part⁵; (2) fees payable in respect of a variation on the initiative of the regulator⁶; and (3) charges payable in respect of the subsistence of an environmental permit⁷.

A scheme may in particular (a) prescribe specific fees and charges or the methods by which they are to be calculated; (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; (c) subject to the requirements of the Environmental Permitting (England and Wales) Regulations 2007⁸, provide for the time when, and the manner in which, payments required by the scheme are to be made; and (d) make such incidental, supplementary and transitional provision as appears necessary or expedient to the appropriate authority⁹.

In making or revising a scheme, so far as practicable the appropriate authority must ensure that the fees and charges payable are sufficient to cover expenditure by local authorities¹⁰ (i) in exercising their functions under the 2007 Regulations; (ii) in making payment to the Environment Agency¹¹ in relation to the exercise of its functions under the provision on notices in relation to emissions to water¹²; (iii) in making payment to any person who prepares guidance in relation to regulated facilities¹³ and regulated activities¹⁴ for which those authorities are the regulator¹⁵.

If a regulator considers that an operator¹⁶ has failed to pay a charge specified in a scheme in respect of the subsistence of the operator's permit, the regulator may revoke the permit¹⁷.

1 As to the meaning of 'appropriate authority' see PARA 662 note 13.

2 As to the meaning of 'environmental permit' see PARA 664. As to grant of an environmental permit see PARA 664.

3 As to variation of an environmental permit see PARA 665.

4 As to transfer of an environmental permit see PARA 665.

5 As to surrender of an environmental permit see PARA 665.

6 Ie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 20(1): see PARA 665. As to the meaning of 'regulator' see PARA 662 note 13.

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 65(1).

8 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538.

9 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 65(2).

10 As to the meaning of 'local authority' see PARA 666 note 1.

11 As to the Environment Agency see PARA 68 et seq.

12 lie under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 58: see PARA 685.

13 As to the meaning of 'regulated facility' see PARA 663 note 1.

14 As to the meaning of 'activity' see PARA 663 note 1.

15 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 65(3). A scheme must provide for the payment of sums by a local authority to the Environment Agency where those sums are related to expenditure by the Agency under reg 58 (see PARA 685) or in preparing guidance referred to in reg 65(3)(c) (see head (iii) in the text): reg 65(4).

16 As to the meaning of 'operator' see PARA 664 note 1.

17 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 65(5). As to revocation of an environmental permit see PARA 665.

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692. Plans relating to emissions.

An appropriate authority¹ may make plans for (1) the setting of limits on the total amount, or the total amount in any period, of emissions² from all or any description of source; or (2) the allocation of quotas relating to such emissions³.

If the appropriate authority allocates a quota in such a plan⁴ it may also make a scheme for the trading or other transfer of that quota⁵.

This provision⁶ does not apply to an emission plan⁷.

1 As to the meaning of 'appropriate authority' see PARA 662 note 13.

2 For these purposes, 'emission' means the direct or indirect release of any substance from individual or diffuse sources into the air, water or land: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 66(4).

3 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 66(1). Regulation 66(1) is subject to reg 66(3): see the text and notes 6, 7.

4 Ie a plan made under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 66(1).

5 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 66(2).

6 Ie the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 66.

7 Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 66(3). For these purposes, 'emission plan' has the meaning given in the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007, SI 2007/2325 (see PARAS 11, 186 note 2): Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 66(4).

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(5) WASTE COLLECTION

693. Collection of controlled waste.

It is the duty of each waste collection authority¹:

- 1633 (1) to arrange for the collection of household waste² in its area³, except waste:
 - (a) which is situated at a place which in the opinion of the authority is so isolated or inaccessible that the cost of collecting it would be unreasonably high⁴; and (b) as to which the authority is satisfied that adequate arrangements for its disposal⁵ have been or can reasonably be expected to be made by a person who controls the waste⁶; and
- 1634 (2) if requested by the occupier of premises in its area to collect any commercial waste⁷ from the premises, to arrange for the collection of the waste⁸.

Arrangements may be made for the collection of industrial waste⁹, if the occupier of premises requests its collection; but a collection authority whose area is included in the area of a disposal authority¹⁰ may not exercise this power except with the consent of the disposal authority¹¹.

No charge may be made for the collection of household waste except in cases prescribed in regulations made by the Secretary of State¹². In any of those cases, the duty to arrange for the collection of the waste does not arise until a person who controls the waste requests the authority to collect it¹³; and the authority may recover a reasonable charge for the collection of the waste from the person who made the request¹⁴.

A person at whose request waste other than household waste is collected is liable to pay a reasonable charge for the collection and disposal of the waste to the authority which arranged for its collection; and it is the duty of that authority to recover the charge unless in the case of a charge in respect of commercial waste the authority considers it inappropriate to do so¹⁵.

It is the duty of each waste collection authority:

- 1635 (i) to make such arrangements for the emptying, without charge, of privies¹⁶ serving one or more private dwellings in its area as the authority considers appropriate¹⁷;
- 1636 (ii) if requested by the person who controls a cesspool¹⁸ serving only one or more private dwellings in its area to empty the cesspool, to remove such of the contents of the cesspool as the authority considers appropriate on payment, if the authority so requires, of a reasonable charge¹⁹.

A waste collection authority may, if requested by the person who controls any other privy or cesspool in its area to empty the privy or cesspool, empty the privy or, as the case may be, remove from the cesspool such of its contents as the authority considers appropriate on payment, if the authority so requires, of a reasonable charge²⁰.

A waste collection authority may: (A) construct, lay and maintain, within or outside its area, pipes and associated works for the purpose of collecting waste²¹; (B) contribute towards the

cost incurred by another person in providing or maintaining pipes or associated works connecting with pipes provided by the authority under head (A) above²².

A waste collection authority may contribute towards the cost incurred by another person in providing or maintaining plant or equipment intended to deal with commercial or industrial waste before it is collected under arrangements made by the authority²³.

Anything collected under arrangements made by a waste collection authority under these provisions belongs to the authority and may be dealt with accordingly²⁴.

1 As to the meaning of 'waste collection authority' see PARA 620 note 8.

2 As to the meaning of 'household waste' see PARA 624; and as to the meaning of 'waste' see PARA 623.

3 Environmental Protection Act 1990 s 45(1)(a).

Any waste collection authority whose area is in England ('English waste collection authority') which has a duty under head (1) in the text must ensure that the arrangements include arrangements for the collection of at least two types of recyclable waste, together or individually separated from the rest of the household waste, unless it is satisfied either that the cost of doing so would be unreasonably high or that comparable alternative arrangements are available: s 45A(1)-(3) (s 45A added by the Household Waste Recycling Act 2003 s 1). 'Recyclable waste' means household waste which is capable of being recycled or composted: Environmental Protection Act 1990 s 45A(6) (as so added). The duty in s 45A(2) applies from 31 December 2010: s 45A(4) (as so added). The Secretary of State may, if requested to do so by an English waste collection authority, direct the authority that its duty under s 45A(2) applies from such date (being no later than 31 December 2015) as may be specified in the direction: s 45A(5) (as so added). At the date at which this volume states the law no such direction had been made.

Not later than 31 October 2004, the Secretary of State had to lay before each House of Parliament a report of the performance of: (1) each English waste authority in meeting its recycling and composting standards (if any); and (2) each English waste collection authority towards meeting the requirement imposed by s 45A(2): s 47A(1) (s 47A added by Household Waste Recycling Act 2003 s 3). 'Recycling and composting standards' means such performance standards and performance indicators (if any) as may be specified for the authority in head (1) above in an order made under the Local Government Act 1999 s 4 (repealed) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 705) in connection with the recycling and composting of household waste: Environmental Protection Act 1990 s 47A(2) (as so added).

The Welsh Ministers may by order made by statutory instrument apply s 45A to Welsh waste collection authorities: see s 45B(1), (2) (s 45B added by the Household Waste Recycling Act 2003 s 2). The Environmental Protection Act 1990 s 161(3) (see PARA 61) does not apply to the making of orders under s 45B: s 45B(3) (as so added).

As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Environmental Protection Act 1990 s 45(1)(a)(i).

5 As to the meaning of 'disposal' see PARA 620 note 12.

6 Environmental Protection Act 1990 s 45(1)(a)(ii).

7 As to the meaning of 'commercial waste' see PARA 624.

8 Environmental Protection Act 1990 s 45(1)(b). The authority cannot escape its duty under s 45 by employing the provisions of the Prevention of Damage by Pests Act 1949 (see PARA 861 et seq): see *Leeds City Council v Spencer* [1999] EHLR 394, CA.

9 As to the meaning of 'industrial waste' see PARA 624.

10 As to the meaning of 'waste disposal authority' see PARA 620 note 7.

11 See the Control of Pollution Act 1974 s 12(2) (amended by the Local Government Act 1985 Sch 6 para 3(2); and SI 1985/1884). The Control of Pollution Act 1974 s 12 is repealed save in so far as it relates to industrial waste (see the Environmental Protection Act 1990 Sch 16 Pt II; and the Environmental Protection Act 1990 (Commencement No 11) Order 1992, SI 1992/266). It is wholly repealed as from a day to be appointed (see the Environmental Protection Act 1990 Sch 16 Pt II), but at the date at which this volume states the law no such day had been appointed.

The Environmental Protection Act 1990 s 45(2) contains provisions similar to those of the Control of Pollution Act 1974 s 12(2), and is to come into force as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As from a day to be appointed, the Environmental Protection Act 1990 s 45(2) is to apply to waste other than controlled waste as it applies to controlled waste: s 63(4) (repealed). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'controlled waste' see PARA 624.

12 Environmental Protection Act 1990 s 45(3). As to the regulations made see the Controlled Waste Regulations 1992, SI 1992/588 (see PARA 624); and the Waste Management Licensing Regulations 1994, SI 1994/1056, but these for the most part have been replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 662 et seq).

13 Environmental Protection Act 1990 s 45(3)(a).

14 Environmental Protection Act 1990 s 45(3)(b).

15 Environmental Protection Act 1990 s 45(4). See *R (on the application of Western Riverside Waste Authority) v Wandsworth Borough Council* [2005] EWHC 536 (Admin), [2006] JPL 270, [2005] All ER (D) 34 (Apr), where it was held that a court will only interfere with the discretion to fix charges on grounds of 'Wednesbury' reasonableness (ie as set out in *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223, [1947] 2 All ER 680, CA: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 59).

In relation to industrial waste see the Control of Pollution Act 1974 s 12(4). As to the repeal of s 12 see note 11.

16 For these purposes, 'privy' means a latrine which has a moveable receptacle: Environmental Protection Act 1990 s 45(12).

17 Environmental Protection Act 1990 s 45(5)(a).

18 For these purposes, 'cesspool' includes a settlement tank or other tank for the reception or disposal of foul matter from buildings: Environmental Protection Act 1990 s 45(12).

19 Environmental Protection Act 1990 s 45(5)(b).

20 Environmental Protection Act 1990 s 45(6).

21 Environmental Protection Act 1990 s 45(7)(a). In relation to industrial waste see the Control of Pollution Act 1974 s 12(6), (7) (s 12(6) amended by the Local Government Act 1985 Sch 6 para 3(2); and SI 1985/1884). As to the repeal of the Control of Pollution Act 1974 s 12 see note 11.

22 Environmental Protection Act 1990 s 45(7)(b).

23 Environmental Protection Act 1990 s 45(8). In relation to industrial waste see the Control of Pollution Act 1974 s 12(8) (amended by the Local Government Act 1985 Sch 6 para 3(2); and SI 1985/1884). As to the repeal of the Control of Pollution Act 1974 s 12 see note 11.

24 Environmental Protection Act 1990 s 45(9). This provision is subject to s 48(1): see PARA 697. In relation to industrial waste see the Control of Pollution Act 1974 s 12(9). As to the repeal of s 12 see note 11.

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694. Receptacles for household waste.

Where a waste collection authority¹ has a duty² to arrange for the collection of household waste³ from any premises, the authority may, by notice served⁴ on him, require the occupier to place the waste for collection in receptacles⁵ of a specified⁶ kind and number⁷. The kind and number of the receptacles required to be used must be such only as are reasonable but, subject to that, separate receptacles or compartments of receptacles may be required to be used for waste which is to be recycled⁸ and waste which is not⁹. In making requirements the authority may, as respects the provision of the receptacles:

- 1637 (1) determine that they be provided by the authority free of charge¹⁰;
- 1638 (2) propose that they be provided, if the occupier agrees, by the authority on payment by him of such a single payment or such periodical payments as he agrees with the authority¹¹;
- 1639 (3) require the occupier to provide them if he does not enter into an agreement under head (2) above within a specified period¹²; or
- 1640 (4) require the occupier to provide them¹³.

In making requirements as respects receptacles, the authority may¹⁴ make provision with respect to:

- 1641 (a) the size, construction and maintenance of the receptacles¹⁵;
- 1642 (b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose¹⁶;
- 1643 (c) the placing of the receptacles for the purpose of avoiding nuisance or detriment to the amenities of the area¹⁷;
- 1644 (d) the placing of the receptacles for that purpose on highways¹⁸;
- 1645 (e) the substances¹⁹ or articles which may or may not be put into the receptacles or compartments of receptacles of any description and the precautions to be taken where particular substances or articles are put into them²⁰; and
- 1646 (f) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles²¹.

No requirement may be made for receptacles to be placed on a highway unless:

- 1647 (i) the relevant highway authority²² has given consent to their being so placed²³; and
- 1648 (ii) arrangements have been made as to the liability for any damage arising out of their being so placed²⁴.

A person who fails, without reasonable excuse, to comply with any of these requirements²⁵ is liable on summary conviction to a penalty²⁶.

Where an occupier is required to provide any receptacles he may, within the period allowed²⁷, appeal to a magistrates' court against any requirement²⁸ on the ground that the requirement is unreasonable²⁹ or that the receptacles in which household waste is placed for collection from the premises are adequate³⁰. Where such an appeal against a requirement is brought: (A) the

requirement is of no effect pending the determination of the appeal³¹; (B) the court must either quash or modify the requirement or dismiss the appeal³²; and (C) no question as to whether the requirement is, in any respect, unreasonable may be entertained in any proceedings for an offence under these provisions³³.

A waste collection authority is not obliged to collect household waste that is placed for collection in contravention of a requirement under the above provisions³⁴.

1 As to the meaning of 'waste collection authority' see PARA 620 note 8.

2 ie by virtue of the Environmental Protection Act 1990 s 45(1)(a): see PARA 693 head (1).

3 As to the meaning of 'household waste' see PARA 624; and as to the meaning of 'waste' see PARA 623.

4 As to service of notices see the Environmental Protection Act 1990 s 160; and PARA 147.

5 In the Environmental Protection Act 1990 s 46, 'receptacle' includes a holder for receptacles: s 46(10).

6 In the Environmental Protection Act 1990 s 46, 'specified' means specified in a notice under s 46(1): s 46(10).

As from a day to be appointed, a further reference is added to the definition, namely a reference to s 46(1A) (see note 7): s 46(10) (definition prospectively amended by the Climate Change Act 2008 Sch 5 Pt 2 para 3(1), (4)). At the date at which this volume states the law no such day had been appointed.

7 Environmental Protection Act 1990 s 46(1).

As from a day to be appointed, the following provisions (ie s 46(1A), (1B)) apply. Where (1) s 46(1) applies to a waste collection authority; and (2) a waste reduction scheme under Sch 2AA (see PARA 704) is in operation in the authority's area, the authority may require the occupier to place the waste for collection in receptacles identified by such means as may be specified: s 46(1A) (s 46(1A), (1B) prospectively added by the Climate Change Act 2008 Sch 5 Pt 2 para 3(1), (2)). A requirement under the Environmental Protection Act 1990 s 46(1A) (a) must be imposed by notice served on the occupier; (b) may be imposed instead of, or in addition to, any requirement imposed on the occupier under s 46(1): s 46(1B) (as so prospectively added). At the date at which this volume states the law no day had been appointed for the commencement of these provisions. See also notes 6, 26.

8 As to the meaning of 'recycle' see PARA 620 note 12.

9 Environmental Protection Act 1990 s 46(2).

10 Environmental Protection Act 1990 s 46(3)(a).

11 Environmental Protection Act 1990 s 46(3)(b). As to charges for the provision, maintenance, repair or renewal of dustbins see the Local Government (Miscellaneous Provisions) Act 1953 s 8 (amended by SI 1976/984). As from a day to be appointed the Local Government (Miscellaneous Provisions) Act 1953 s 8 is repealed by the Control of Pollution Act 1974 Sch 4. At the date at which this volume states the law no such day had been appointed.

12 Environmental Protection Act 1990 s 46(3)(c).

13 Environmental Protection Act 1990 s 46(3)(d).

14 ie by the notice under the Environmental Protection Act 1990 s 46(1).

15 Environmental Protection Act 1990 s 46(4)(a).

16 Environmental Protection Act 1990 s 46(4)(b).

17 Environmental Protection Act 1990 s 46(4)(ba) (added by the London Local Authorities Act 2007 s 19).

18 Environmental Protection Act 1990 s 46(4)(c).

19 As to the meaning of 'substance' see PARA 623 note 2.

20 Environmental Protection Act 1990 s 46(4)(d).

- 21 Environmental Protection Act 1990 s 46(4)(e).
- 22 As to the highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 50 et seq.
- 23 Environmental Protection Act 1990 s 46(5)(a).
- 24 Environmental Protection Act 1990 s 46(5)(b).
- 25 Ie any requirements imposed under the Environmental Protection Act 1990 s 46(1), s 46(3)(c) or (d), or s 46(4). See note 26.
- 26 Environmental Protection Act 1990 s 46(6). The penalty is a fine not exceeding level 3 on the standard scale: see s 46(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to fixed penalty notices for offences under the Environmental Protection Act 1990 ss 46, 47 see ss 47ZA, 47ZB; and PARA 696.

As from a day to be appointed, a further reference is added to s 46(6), namely a reference to s 46(1A) (see note 7; and see also note 25): s 46(6) (prospectively amended by the Climate Change Act 2008 Sch 5 Pt 2 para 3(1), (3)). At the date at which this volume states the law no such day had been appointed.
- 27 The period allowed to the occupier of premises for appealing against a requirement is the period of 21 days beginning: (1) in a case where a period was specified under the Environmental Protection Act 1990 s 46(3) (c) (see head (3) in the text), with the end of that period; and (2) where no period was specified, with the day on which the notice making the requirement was served on him: s 46(8).
- 28 Ie any requirement imposed under the Environmental Protection Act 1990 s 46(1), s 46(3)(c) or (d), or s 46(4).
- 29 Environmental Protection Act 1990 s 46(7)(a).
- 30 Environmental Protection Act 1990 s 46(7)(b).
- 31 Environmental Protection Act 1990 s 46(9)(a).
- 32 Environmental Protection Act 1990 s 46(9)(b).
- 33 Environmental Protection Act 1990 s 46(9)(c). This provision refers to an offence under s 46(6): see the text and note 26.
- 34 Environmental Protection Act 1990 s 46(11) (added by the Climate Change Act 2008 s 76). The reference is to the Environmental Protection Act 1990 s 46.

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695. Receptacles for commercial or industrial waste.

A waste collection authority¹ may, at the request of any person, supply him with receptacles² for commercial or industrial waste³ which he has requested the authority to arrange to collect⁴ and must make a reasonable charge for any receptacle supplied unless in the case of a receptacle for commercial waste the authority considers it appropriate not to make a charge⁵. If it appears to a waste collection authority that there is likely to be situated, on any premises in its area, commercial waste or industrial waste of a kind which, if the waste is not stored in receptacles of a particular kind, is likely to cause a nuisance or to be detrimental to the amenities of the locality, the authority may, by notice served⁶ on him, require the occupier of the premises to provide at the premises receptacles for the storage of such waste of a specified⁷ kind and number⁸. The kind and number of the receptacles required to be used must be such only as are reasonable⁹. In making requirements as respects receptacles, the authority may¹⁰ make provision with respect to:

- 1649 (1) the size, construction and maintenance of the receptacles¹¹;
- 1650 (2) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose¹²;
- 1651 (3) the placing of the receptacles for the purpose of avoiding nuisance or detriment to the amenities of the area¹³;
- 1652 (4) the placing of the receptacles for that purpose on highways¹⁴;
- 1653 (5) the substances¹⁵ or articles which may or may not be put into the receptacles and the precautions to be taken where particular substances or articles are put into them¹⁶; and
- 1654 (6) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles¹⁷.

No requirement may be made for receptacles to be placed on a highway unless:

- 1655 (a) the relevant highway authority¹⁸ has given consent to their being so placed¹⁹; and
- 1656 (b) arrangements have been made as to the liability for any damage arising out of their being so placed²⁰.

A person who fails, without reasonable excuse, to comply with any of these requirements²¹ is liable on summary conviction to a penalty²².

Where an occupier is required to provide any receptacles he may, within the period allowed²³, appeal to a magistrates' court against any requirement²⁴ on the ground that the requirement is unreasonable or that the waste is not likely to cause a nuisance or be detrimental to the amenities of the locality²⁵. Where such an appeal against a requirement is brought: (i) the requirement is of no effect pending the determination of the appeal²⁶; (ii) the court must either quash or modify the requirement or dismiss the appeal²⁷; and (iii) no question as to whether the requirement is, in any respect, unreasonable may be entertained in any proceedings for an offence under these provisions²⁸.

1 As to the meaning of 'waste collection authority' see PARA 620 note 8.

2 In the Environmental Protection Act 1990 s 47, 'receptacle' includes a holder for receptacles: s 47(10).

3 As to the meanings of 'commercial waste' and 'industrial waste' see PARA 624. As to the meaning of 'waste' see PARA 623.

4 See PARA 693.

5 Environmental Protection Act 1990 s 47(1).

In relation to industrial waste see also the Control of Pollution Act 1974 s 13 (amended by the Local Government, Planning and Land Act 1980 Sch 2 para 10; the Local Government Act 1985 Sch 6 para 3; SI 1985/1884; and by virtue of the Criminal Justice Act 1982 ss 38, 46). The Control of Pollution Act 1974 s 13 is repealed save in so far as it relates to industrial waste (see the Environmental Protection Act 1990 Sch 16 Pt II; and the Environmental Protection Act 1990 (Commencement No 11) Order 1992, SI 1992/266), and as from a day to be appointed is wholly repealed (see the Environmental Protection Act 1990 Sch 16 Pt II). At the date at which this volume states the law no such day had been appointed.

6 As to service see the Environmental Protection Act 1990 s 160; and PARA 147.

7 In the Environmental Protection Act 1990 s 47, 'specified' means specified in a notice under s 47(2): s 47(10).

8 Environmental Protection Act 1990 s 47(2).

9 Environmental Protection Act 1990 s 47(3).

10 Ie by the notice under the Environmental Protection Act 1990 s 47(2).

11 Environmental Protection Act 1990 s 47(4)(a).

12 Environmental Protection Act 1990 s 47(4)(b).

13 Environmental Protection Act 1990 s 47(4)(ba) (added by the London Local Authorities Act 2007 s 21(1)).

14 Environmental Protection Act 1990 s 47(4)(c).

15 As to the meaning of 'substance' see PARA 623 note 2.

16 Environmental Protection Act 1990 s 47(4)(d).

17 Environmental Protection Act 1990 s 47(4)(e).

18 As to the highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 50 et seq.

19 Environmental Protection Act 1990 s 47(5)(a).

20 Environmental Protection Act 1990 s 47(5)(b).

21 Ie any requirements imposed under the Environmental Protection Act 1990 s 47(2) or s 47(4).

22 Environmental Protection Act 1990 s 47(6). The penalty is a fine not exceeding level 3 on the standard scale: see s 47(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to fixed penalty notices for offences under the Environmental Protection Act 1990 ss 46, 47 see ss 47ZA, 47ZB; and PARA 696.

23 The period allowed to the occupier of premises for appealing against a requirement is the period of 21 days beginning with the day on which the notice making the requirement was served on him: Environmental Protection Act 1990 s 47(8).

24 Ie any requirement imposed under the Environmental Protection Act 1990 s 47(2) or s 47(4).

25 Environmental Protection Act 1990 s 47(7).

26 Environmental Protection Act 1990 s 47(9)(a).

27 Environmental Protection Act 1990 s 47(9)(b).

28 Environmental Protection Act 1990 s 47(9)(c). This provision refers to an offence under s 47(6): see the text and note 22.

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696. Fixed penalty notices for offences relating to waste receptacles.

Where on any occasion an authorised officer¹ of a waste collection authority has reason to believe that a person has committed an offence relating to waste receptacles², the authorised officer may give that person a notice³ offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the waste collection authority⁴. Where a person is given such a notice in respect of an offence: (1) no proceedings may be instituted for that offence before the expiration of the period of 14 days following the date of the notice⁵; and (2) he may not be convicted of that offence if he pays the fixed penalty before the expiration of that period⁶.

Such a notice⁷ must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence⁸. It must also state: (a) the period during which, by virtue of heads (1) and (2) above, proceedings will not be taken for the offence⁹; (b) the amount of the fixed penalty¹⁰; and (c) the person to whom and the address at which the fixed penalty may be paid¹¹.

Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in head (c) above at the address so mentioned¹².

In any proceedings a certificate which purports to be signed on behalf of the chief finance officer¹³ of the waste collection authority, and states that payment of a fixed penalty was or was not received by a date specified in the certificate, is evidence of the facts stated¹⁴.

In relation to a fixed penalty payable to a waste collection authority in pursuance of a notice as mentioned above¹⁵, the amount of the fixed penalty: (i) is the amount specified by the waste collection authority in relation to the authority's area¹⁶; or (ii) if no amount is so specified, a specific amount¹⁷. The waste collection authority may make provision for treating the fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the authority¹⁸. The appropriate person may by regulations¹⁹ make provision in connection with these powers²⁰.

1 For these purposes, 'authorised officer', in relation to a waste collection authority, means: (1) an employee of the authority who is authorised in writing by the authority for the purposes of giving notices under the Environmental Protection Act 1990 s 47ZA; (2) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function; (3) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices: s 47ZA(10) (ss 47ZA, 47ZB added by the Clean Neighbourhoods and Environment Act 2005 s 48). As to the meaning of 'waste collection authority' see PARA 620 note 8.

2 Environmental Protection Act 1990 s 47ZA(1) (as added: see note 1). The offences referred to in the text are those under s 46 (see PARA 693) or s 47 (see PARA 694): see s 47ZA (as so added). As to the use of fixed penalty receipts see s 73A; and PARA 646.

3 The form of a notice under the Environmental Protection Act 1990 s 47ZA is to be such as the appropriate person may by order prescribe: s 47ZA(8) (as added: see note 1). As to the meaning of 'appropriate person' see PARA 646 note 4.

4 Environmental Protection Act 1990 s 47ZA(2) (as added: see note 1).

5 Environmental Protection Act 1990 s 47ZA(3)(a) (as added: see note 1).

- 6 Environmental Protection Act 1990 s 47ZA(3)(b) (as added: see note 1).
- 7 le under the Environmental Protection Act 1990 s 47ZA.
- 8 Environmental Protection Act 1990 s 47ZA(4) (as added: see note 1).
- 9 Environmental Protection Act 1990 s 47ZA(5)(a) (as added: see note 1).
- 10 Environmental Protection Act 1990 s 47ZA(5)(b) (as added: see note 1).
- 11 Environmental Protection Act 1990 s 47ZA(5)(c) (as added: see note 1).
- 12 Environmental Protection Act 1990 s 47ZA(6) (as added: see note 1). Where a letter is sent in accordance with s 47ZA(6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post: s 47ZA(7) (as so added).
- 13 'Chief finance officer', in relation to a waste collection authority, means the person having responsibility for the financial affairs of the authority: Environmental Protection Act 1990 s 47ZA(10) (as added: see note 1).
- 14 Environmental Protection Act 1990 s 47ZA(9) (as added: see note 1).
- 15 Environmental Protection Act 1990 s 47ZB(1) (as added: see note 1). The notice referred to in the text is a notice under s 47ZA: see the text and notes 1-14.
- 16 Environmental Protection Act 1990 s 47ZB(2)(a) (as added: see note 1).
- 17 Environmental Protection Act 1990 s 47ZB(2)(b) (as added: see note 1). The amount is £100: see s 47ZB(2)(b) (as so added). The appropriate person may by order substitute a different amount for the amount for the time being specified in s 47ZB(2)(b): s 47ZB(6) (as so added).
- 18 Environmental Protection Act 1990 s 47ZB(3) (as added: see note 1).
- 19 Regulations under the Environmental Protection Act 1990 s 47ZB(4) may, in particular: (1) require an amount specified under s 47ZB(2)(a) to fall within a range prescribed in the regulations; (2) restrict the extent to which, and the circumstances in which, a waste collection authority can make provision under s 47ZB(3): s 47ZB(5) (as added: see note 1). As to the regulations made under s 47ZB(4), (5) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175. See also the Environmental Offences (Use of Fixed Penalty Receipts) (Wales) Regulations 2007, SI 2007/739 (amended by SI 2008/663); and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663.
- 20 Environmental Protection Act 1990 s 47ZB(4) (as added: see note 1). The powers referred to in the text are those conferred on waste collection authorities under s 47ZB(2)(a), (3): see the text and notes 16, 18. See note 19.

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697. Duties of waste collection authorities as respects disposal of waste collected.

It is the duty of each waste collection authority¹ to deliver for disposal² all waste³ which is collected by the authority⁴ to such places as the waste disposal authority⁵ for its area directs⁶. This duty imposed on a waste collection authority does not generally⁷ apply as respects household waste⁸ or commercial waste⁹ for which the authority decides to make arrangements for recycling¹⁰ the waste; and the authority must have regard, in deciding what recycling arrangements to make, to its waste recycling plan¹¹. However, where a waste disposal authority has made arrangements, as respects household waste or commercial waste in its area or any part of its area, to recycle the waste, or any of it, the waste disposal authority may, by notice served¹² on the waste collection authority, object to the waste collection authority having the waste recycled; and the objection may be made as respects all the waste, part only of the waste or specified descriptions of the waste¹³.

A waste collection authority may provide plant and equipment for the sorting and baling of waste retained¹⁴ by the authority¹⁵. A waste collection authority may permit another person to use such facilities provided by the authority¹⁶ and may provide for the use of another person any such facilities as the authority has power to provide¹⁷, and:

- 1657 (1) subject to head (2) below, it is the duty of the authority to make a reasonable charge in respect of the use by another person of the facilities, unless the authority considers it appropriate not to make a charge¹⁸;
- 1658 (2) no charge may be made under this provision in respect of household waste¹⁹; and
- 1659 (3) anything delivered to the authority by another person in the course of using the facilities belongs to the authority and may be dealt with accordingly²⁰.

1 As to the meaning of 'waste collection authority' see PARA 620 note 8. See also note 6.

2 As to the meaning of 'disposal' see PARA 620 note 12.

3 As to the meaning of 'waste' see PARA 623.

4 I.e. under the Environmental Protection Act 1990 s 45: see PARA 693. As to the disposal of waste collected under the Control of Pollution Act 1974 s 12 (see PARA 693) see s 14 (amended by the Water Act 1989 Sch 25 para 48(5); the Environmental Protection Act 1990 s 77(8); and SI 1985/1884). The Control of Pollution Act 1974 s 14 is repealed save in so far as it relates to industrial waste (see the Environmental Protection Act 1990 Sch 16 Pt II; and the Environmental Protection Act 1990 (Commencement No 11) Order 1992, SI 1992/266), and as from a day to be appointed is wholly repealed (see the Environmental Protection Act 1990 Sch 16 Pt II). At the date at which this volume states the law no such day had been appointed.

5 As to the meaning of 'waste disposal authority' see PARA 620 note 7.

6 Environmental Protection Act 1990 s 48(1).

A waste collection authority in England which is not also a waste disposal authority must discharge its duty under s 48(1) in accordance with any directions about separation of waste given by the waste disposal authority for its area: s 48(1A) (added by the Waste and Emissions Trading Act 2003 s 31(1), (2)).

As to the duties under the Environmental Protection Act 1990 s 48 and judicial review of a council decision in regard to charges for the collection of commercial waste and the release of the previous contractor see *R (on*

the application of Western Riverside Waste Authority) v Wandsworth Borough Council [2005] EWHC 536 (Admin), [2006] JPL 270, [2005] Env LR 41.

7 le except in cases falling within the Environmental Protection Act 1990 s 48(4): see the text and note 13.

8 As to the meaning of 'household waste' see PARA 624.

9 As to the meaning of 'commercial waste' see PARA 624.

10 As to the meaning of 'recycle' see PARA 620 note 12.

11 Environmental Protection Act 1990 s 48(2). The plan referred to in the text is a plan under s 49 (repealed). See now the provisions on joint municipal waste management strategies in the Waste and Emissions Trading Act 2003 ss 29-34; and PARAS 628-629.

A waste collection authority which decides to make arrangements under the Environmental Protection Act 1990 s 48(2) for recycling waste collected by it must, as soon as reasonably practicable, by notice in writing, inform the waste disposal authority for the area which includes its area of the arrangements which it proposes to make: s 48(3).

12 As to service see the Environmental Protection Act 1990 s 160; and PARA 147.

13 Environmental Protection Act 1990 s 48(4) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 5 Pt 4).

Where an objection is made under the Environmental Protection Act 1990 s 48(4), s 48(2) (see the text and note 11) is not available to the waste collection authority to the extent objected to: s 48(5).

14 le retained under the Environmental Protection Act 1990 s 48(2).

15 Environmental Protection Act 1990 s 48(6) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 5 Pt 4).

16 le under the Environmental Protection Act 1990 s 48(6).

17 Environmental Protection Act 1990 s 48(8).

18 Environmental Protection Act 1990 s 48(8)(a).

19 Environmental Protection Act 1990 s 48(8)(b).

20 Environmental Protection Act 1990 s 48(8)(c).

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698. Functions of waste disposal authorities.

It is the duty of each waste disposal authority¹ to arrange:

- 1660 (1) for the disposal² of the controlled waste³ collected in its area by the waste collection authorities⁴; and
- 1661 (2) for places to be provided at which persons resident in its area may deposit their household waste⁵ and for the disposal of waste so deposited⁶.

The arrangements made by a waste disposal authority under head (2) above must be such as to secure that:

- 1662 (a) each place is situated either within the area of the authority or so as to be reasonably accessible to persons resident in its area⁷;
- 1663 (b) each place is available for the deposit of waste at all reasonable times (including at least one period on the Saturday or following day of each week except a week in which the Saturday is 25 December or 1 January)⁸;
- 1664 (c) each place is available for the deposit of waste free of charge by persons resident in the area⁹,

but the arrangements may restrict the availability of specified places to specified descriptions of waste¹⁰. A waste disposal authority may include in arrangements made under head (2) above arrangements for the places provided for its area for the deposit of household waste free of charge by residents in its area to be available for the deposit of household or other controlled waste by other persons on such terms as to payment (if any) as the authority determines¹¹.

For the purpose of discharging its duty under head (1) above as respects controlled waste collected as mentioned in that head, a waste disposal authority:

- 1665 (i) must give directions¹² to the waste collection authorities within its area as to the persons to whom and places at which such waste is to be delivered¹³;
- 1666 (ii) may contribute towards the cost incurred by persons who produce commercial or industrial waste¹⁴ in providing and maintaining plant or equipment intended to deal with such waste before it is collected¹⁵; and
- 1667 (iii) may contribute towards the cost incurred by persons who produce commercial or industrial waste in providing or maintaining pipes or associated works connecting with pipes provided by a waste collection authority within the area of the waste disposal authority¹⁶.

1 As to the meaning of 'waste disposal authority' see PARA 620 note 7.

2 As to the meaning of 'disposal' see PARA 620 note 12.

3 As to the meaning of 'controlled waste' see PARA 624. As to the meaning of 'waste' see PARA 623.

4 Environmental Protection Act 1990 s 51(1)(a). As to the meaning of 'waste collection authority' see PARA 620 note 8. See note 6.

5 As to the meaning of 'household waste' see PARA 624.

6 Environmental Protection Act 1990 s 51(1)(b). Section 51(1) is subject to s 77 (see PARA 620): s 51(7).

As to an application for judicial review of a council decision to impose entrance restrictions at household waste sites and the operation of s 51 see *R v Brighton and Hove Council, ex p Rayson* [2003] Env LR 14, [2003] EHLR 19.

As to tendering see *R v Avon County Council, ex p Terry Adams Ltd* (1994) 159 LG Rev 321, [1994] Env LR 442, CA; *Mass Energy Ltd v Birmingham City Council* [1993] Env LR 298, CA; *R v Cardiff City Council, ex p Gooding Investments Ltd* [1996] Env LR 288, QBD. See also Department of the Environment Circular 8/91.

7 Environmental Protection Act 1990 s 51(2)(a). See *R v Brighton and Hove Council, ex p Rayson* [2003] Env LR 14, [2003] EHLR 19; and note 6.

8 Environmental Protection Act 1990 s 51(2)(b). See note 7.

9 Environmental Protection Act 1990 s 51(2)(c). See note 7.

10 Environmental Protection Act 1990 s 51(2). See note 7.

11 Environmental Protection Act 1990 s 51(3). See *R v Brighton and Hove Council, ex p Rayson* [2003] Env LR 14, [2003] EHLR 19; and note 6.

12 As to the giving of directions see the Environmental Protection Act 1990 s 161(5), (6); and PARA 61. See also note 13.

13 Environmental Protection Act 1990 s 51(4)(a).

A waste disposal authority in England which is not also a waste collection authority may in directions under s 51(4)(a) include requirements about separation that relate to waste as delivered, but may do so only if it considers it necessary for assisting it to comply with any obligation imposed on it by or under any enactment: s 51(4A) (s 51(4A)-(4D) added by the Waste and Emissions Trading Act 2003 s 31(1), (3)). Before exercising its power to include requirements about separation in directions under the Environmental Protection Act 1990 s 51(4)(a), a waste disposal authority must consult the waste collection authorities within its area: s 51(4B) (as so added). In exercising its power to include requirements about separation in directions under s 51(4)(a), a waste disposal authority must have regard to any guidance given by the Secretary of State as to the exercise of that power: s 51(4C) (as so added). A waste disposal authority which includes requirements about separation in directions given under s 51(4)(a) must notify the waste collection authorities to which the directions are given of its reasons for including the requirements: s 51(4D) (as so added). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

14 As to the meanings of 'commercial waste' and 'industrial waste' see PARA 624.

15 Environmental Protection Act 1990 s 51(4)(e).

16 Environmental Protection Act 1990 s 51(4)(f).

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699. Payments for recycling and disposal etc of waste.

Where a waste collection authority¹ retains for recycling² waste³ collected by it⁴, the waste disposal authority⁵ for the area which includes the area of the waste collection authority must make to that authority payments in respect of the waste so retained: (1) in the case of a waste disposal authority in England, of such amounts as may be determined in accordance with regulations made by the Secretary of State; and (2) in the case of a waste disposal authority in Wales, of such amounts representing its net saving of expenditure on the disposal⁶ of the waste as the authority determines⁷.

Where, by reason of the discharge by a waste disposal authority of its functions, waste arising in its area does not fall to be collected by a waste collection authority⁸, the waste collection authority is to make to the waste disposal authority payments in respect of the waste not falling to be so collected: as from a day to be appointed (a) in the case of a waste disposal authority in England, of such amounts as may be determined in accordance with regulations made by the Secretary of State; and (b) in the case of a waste disposal authority in Wales, of such amounts representing its net saving of expenditure on the collection of the waste as the authority determines⁹.

Where a person other than a waste collection authority, for the purpose of recycling it, collects waste arising in the area of a waste disposal authority which would fall to be collected by the waste collection authority¹⁰, the waste disposal authority may make to that person payments in respect of the waste so collected: (i) in the case of a waste disposal authority in England, of such amounts as may be determined in accordance with regulations made by the Secretary of State; and (ii) in the case of a waste disposal authority in Wales, of such amounts representing its net saving of expenditure on the disposal of the waste as the authority determines¹¹.

Where a person other than a waste collection authority, for the purpose of recycling it, collects waste which would fall to be collected by the waste collection authority¹², the waste collection authority may make to that person payments in respect of the waste so collected: as from a day to be appointed (A) in the case of a waste collection authority in England, of such amounts as may be determined in accordance with regulations made by the Secretary of State; and (B) in the case of a waste collection authority in Wales, of such amounts representing its net saving of expenditure on the collection of the waste as the authority determines¹³.

The Secretary of State may by regulations impose on waste disposal authorities in England a duty to make payments¹⁴ to such persons in such circumstances and in respect of such descriptions or quantities of waste as are specified in the regulations¹⁵. Regulations may impose on waste disposal authorities in Wales a duty to make similar payments to such persons in such circumstances and in respect of such descriptions or quantities of waste as are specified in the regulations¹⁶.

The Secretary of State must by regulations make provision for the determination of the net saving of expenditure for the above purposes¹⁷.

A waste disposal authority is entitled to receive from a waste collection authority such sums as are needed to reimburse the waste disposal authority the reasonable cost of making arrangements¹⁸ for the disposal of commercial and industrial waste¹⁹ collected in the area of the waste disposal authority²⁰. A waste disposal authority must pay to a waste collection authority a reasonable contribution towards expenditure reasonably incurred by the waste collection

authority in delivering waste²¹ to a place which is unreasonably far from the waste collection authority's area²².

A waste disposal authority in England which is not also a waste collection authority must pay to a waste collection authority within its area such amounts as are needed to ensure that the collection authority is not financially worse off as a result of having to comply with any separation requirements²³. A waste disposal authority in England which is not also a waste collection authority may pay to a waste collection authority within its area which performs its duty²⁴ by delivering waste in a state of separation, but which is not subject to any separation requirements as respects the delivery of that waste, contributions of such amounts as the disposal authority may determine towards expenditure of the collection authority that is attributable to its delivering the waste in that state²⁵. The Secretary of State may by regulations make provision about how amounts to be paid²⁶ are to be determined, and any such regulations may include provision for amounts to be less than they would otherwise be, or to be nil, if conditions specified in the regulations are not satisfied²⁷. Any question arising²⁸ must, in default of agreement between the paying and receiving authorities, be determined by arbitration²⁹. A waste collection authority in England which is not also a waste disposal authority must supply the waste disposal authority for its area with such information as the disposal authority may reasonably require for the purpose of determining the relevant amounts³⁰, or for the purpose of estimating any amounts that would fall to be determined³¹ were the collection authority to be subject to particular separation requirements³².

1 As to the meaning of 'waste collection authority' see PARA 620 note 8.

2 Ie under the Environmental Protection Act 1990 s 48(2): see PARA 697. As to the meaning of 'recycle' see PARA 620 note 12.

In s 52, references to recycling waste include re-using it (whether or not the waste is subjected to any process): s 52(12) (added by the Clean Neighbourhoods and Environment Act 2005 s 49(1), (9)).

3 As to the meaning of 'waste' see PARA 623. See note 2.

4 Ie under the Environmental Protection Act 1990 s 45: see PARA 693.

5 As to the meaning of 'waste disposal authority' see PARA 620 note 7.

6 As to the meaning of 'disposal' see PARA 620 note 12.

7 Environmental Protection Act 1990 s 52(1) (amended by the Clean Neighbourhoods and Environment Act 2005 s 49(1), (2)). As to regulations under the Environmental Protection Act 1990 s 52(1)(a), (3)(a) (see heads (1) and (i) in the text) see the Environmental Protection (Waste Recycling Payments) Regulations 2006, SI 2006/743. See further note 16.

The Secretary of State may by order disapply the Environmental Protection Act 1990 s 52(1) in relation to any waste disposal authority constituted under the Local Government Act 1985 s 10 (joint arrangements for waste disposal in London and metropolitan counties) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 17) or any authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities) (see PARA 621): Environmental Protection Act 1990 s 52(1A) (s 52(1A), (1B) added by the Clean Neighbourhoods and Environment Act 2005 s 49(1), (3), (4); and the Environmental Protection Act 1990 s 52(1A) amended by the Local Government and Public Involvement in Health Act 2007 Sch 13 Pt 2 para 49). As to the order that has been made under the Environmental Protection Act 1990 s 52(1A) see the Joint Waste Disposal Authorities (Recycling Payments) (Disapplication) (England) Order 2006, SI 2006/651, which disapplies the requirement in the Environmental Protection Act 1990 s 52(1) for joint waste disposal authorities established under the Waste Regulation and Disposal (Authorities) Order 1985, SI 1985/1884 (see PARA 620) to make payments to a waste collection authority for the waste the collection authority retains and recycles in the waste disposal authority's area.

A waste disposal authority is not required to make payments to a waste collection authority under the Environmental Protection Act 1990 s 52(1) where, on the basis of arrangements involving the two authorities, the waste collection authority had agreed that such payments need not be made: s 52(1B) (as so added).

As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

8 le under the Environmental Protection Act 1990 s 45: see PARA 693.

9 Environmental Protection Act 1990 s 52(2) (prospectively amended by the Clean Neighbourhoods and Environment Act 2005 s 49(1), (5)). See further note 13. At the date at which this volume states the law no order had been made bringing the prospective amendment to the Environmental Protection Act 1990 s 52(2) (ie the addition of the material in heads (a) and (b) in the text) into force.

10 le under the Environmental Protection Act 1990 s 45: see PARA 693.

11 Environmental Protection Act 1990 s 52(3) (amended by the Clean Neighbourhoods and Environment Act 2005 s 49(1), (6)). As to regulations see note 7. See further note 16.

The Secretary of State may give guidance: (1) to a waste disposal authority in England, for the purposes of determining whether to exercise the power in the Environmental Protection Act 1990 s 52(3); (2) to a waste collection authority in England, for the purposes of determining whether to exercise the power in s 52(4): s 52(8A) (added by the Clean Neighbourhoods and Environment Act 2005 s 49(1), (8)). At the date at which this volume states the law the Environmental Protection Act 1990 s 52(8A) is only in force for the purpose of enabling guidance to be given under head (1) above.

12 le under the Environmental Protection Act 1990 s 45: see PARA 693.

13 Environmental Protection Act 1990 s 52(4) (prospectively amended by the Clean Neighbourhoods and Environment Act 2005 s 49(1), (7)). At the date at which this volume states the law no order had been made bringing the prospective amendment to the Environmental Protection Act 1990 s 52(4) (ie the addition of the material in heads (A) and (B) in the text) into force. See note 11.

For the purposes of the Environmental Protection Act 1990 s 52(2)(b), (4)(b) (see heads (b) and (B) in the text), the net saving of expenditure of a waste collection authority on the collection of any waste not falling to be collected by it is the amount of the expenditure which the authority would, if it had had to collect the waste, have incurred in collecting it: s 52(7) (prospectively amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 3(1), (5)). The prospective amendment is the substitution of the reference to the Environmental Protection Act 1990 s 52(2)(b), (4)(b) for the previous reference to s 52(2), (4).

14 le corresponding to the payments which are authorised by the Environmental Protection Act 1990 s 52(3): see head (i) in the text.

15 Environmental Protection Act 1990 s 52(4A) (added by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 3(1), (2)). At the date at which this volume states the law no regulations had been made under the Environmental Protection Act 1990 s 52(4A).

16 Environmental Protection Act 1990 s 52(5) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 3(1), (3)). The payments that may be imposed under this provision are payments corresponding to those authorised by the Environmental Protection Act 1990 s 52(3): see head (ii) in the text. At the date at which this volume states the law no regulations had been made under the Environmental Protection Act 1990 s 52(5).

For the purposes of s 52(1)(b), (3)(b) (see heads (2), (ii) in the text) and s 52(5), the net saving of expenditure of a waste disposal authority on the disposal of any waste retained or collected for recycling is the amount of the expenditure which the authority would, but for the retention or collection, have incurred in having it disposed of less any amount payable by the authority to any person in consequence of the retention or collection for recycling (instead of the disposal) of the waste: s 52(6) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 3(1), (4)).

17 Environmental Protection Act 1990 s 52(8) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 3(1), (6)). At the date at which this volume states the law the amendment is only in force for certain purposes: see the Clean Neighbourhoods and Environment Act 2005 (Commencement No 4) Order 2006, SI 2006/656, art 3(e)(ii).

The purposes referred to in the text are those of the Environmental Protection Act 1990 s 52(1)(b), (2)(b), (3)(b), (4)(b) (see heads (2), (b), (ii), (B) in the text) and s 52(5) (see the text and note 16). Section 52(8) is in force in so far as it relates to s 52(1), (3) (see the Environmental Protection Act 1990 (Commencement No 10) Order 1992, SI 1992/2829), but at the date at which this volume states the law no order had been made bringing it into force for other purposes.

As to the regulations made under the Environmental Protection Act 1990 s 52(8) see the Waste Management (Miscellaneous Provisions) Regulations 1997, SI 1997/351 (amended by SI 1998/607; SI 1999/546). For guidance as to the regulations see *R v North Yorkshire County Council, ex p Scarborough Borough Council* [1999] Env LR 768, [1999] JPL 1087.

18 le under the Environmental Protection Act 1990 s 51(1): see PARA 698.

- 19 As to the meanings of 'commercial waste' and 'industrial waste' see PARA 624.
- 20 Environmental Protection Act 1990 s 52(9). See further note 22.
- 21 Ie in pursuance of a direction under the Environmental Protection Act 1990 s 51(4)(a): see PARA 698 head (i).
- 22 Environmental Protection Act 1990 s 52(10). Any question arising under s 52(9) or s 52(10) must, in default of agreement between the two authorities in question, be determined by arbitration: s 52(11).
- 23 Environmental Protection Act 1990 s 52A(1) (s 52A added by the Waste and Emissions Trading Act 2003 s 31(1), (4)). 'Separation requirements', in relation to a waste collection authority, means requirements about separation included in directions given to it under the Environmental Protection Act 1990 s 51(4)(a) (see PARA 698 head (i)): s 52A(7) (as so added).
- 24 Ie under the Environmental Protection Act 1990 s 48(1): see PARA 697.
- 25 Environmental Protection Act 1990 s 52A(2) (as added: see note 23).
- 26 Ie under the Environmental Protection Act 1990 s 52A.
- 27 Environmental Protection Act 1990 s 52A(3), (4) (as added: see note 23). At the date at which this volume states the law no such regulations had been made.
- 28 Ie arising under the Environmental Protection Act 1990 s 52A.
- 29 Environmental Protection Act 1990 s 52A(5) (as added: see note 23).
- 30 Ie under the Environmental Protection Act 1990 s 52A.
- 31 See note 30.
- 32 Environmental Protection Act 1990 s 52A(6) (as added: see note 23).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(5) WASTE COLLECTION/700. Powers for recycling waste.

700. Powers for recycling waste.

The following provisions have effect for conferring on waste disposal authorities¹ and waste collection authorities² powers for the purposes of recycling waste³.

A waste disposal authority may: (1) make arrangements to recycle waste as respects which the authority has duties⁴ or agrees with another person for its disposal or treatment⁵; (2) make arrangements to use waste for the purpose of producing from it heat or electricity or both⁶; (3) buy or otherwise acquire waste with a view to its being recycled⁷; (4) use, sell or otherwise dispose of waste as respects which the authority has duties⁸ or anything produced from such waste⁹.

A waste collection authority may: (a) buy or otherwise acquire waste with a view to recycling it¹⁰; (b) use, or dispose of by way of sale or otherwise to another person, waste belonging to the authority or anything produced from such waste¹¹.

1 As to the meaning of 'waste disposal authority' see PARA 620 note 7.

2 As to the meaning of 'waste collection authority' see PARA 620 note 8.

3 Environmental Protection Act 1990 s 55(1). As to the meaning of 'waste' see PARA 623; and as to the meaning of 'recycle' see PARA 620 note 12.

4 *Ie* under the Environmental Protection Act 1990 s 51(1): see PARA 698.

5 Environmental Protection Act 1990 s 55(2)(a) (s 55(2)(a), (b) amended by the Clean Neighbourhoods and Environment Act 2005 Sch 5 Pt 4). As to the meaning of 'disposal' see PARA 620 note 12; and as to the treatment of waste see PARA 620 note 12.

6 Environmental Protection Act 1990 s 55(2)(b) (as amended: see note 5).

7 Environmental Protection Act 1990 s 55(2)(c).

8 *Ie* under the Environmental Protection Act 1990 s 51(1): see PARA 698.

9 Environmental Protection Act 1990 s 55(2)(d).

10 Environmental Protection Act 1990 s 55(3)(a).

11 Environmental Protection Act 1990 s 55(3)(b).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(5) WASTE COLLECTION/701. Powers of Secretary of State to require waste to be accepted, treated, disposed of or delivered.

701. Powers of Secretary of State to require waste to be accepted, treated, disposed of or delivered.

The Secretary of State¹ may, by notice in writing, direct² the holder of any environmental permit³ authorising a waste operation⁴ to accept and keep, or accept and treat or dispose⁵ of, waste⁶ at specified⁷ places on specified terms⁸. The Secretary of State may, by notice in writing, direct any person who is keeping waste on any land⁹ to deliver the waste to a specified person on specified terms with a view to its being treated or disposed of by that other person¹⁰. A direction under these provisions may impose a requirement as respects waste of any specified kind or as respects any specified consignment of waste¹¹.

A person who fails, without reasonable excuse, to comply with a direction under these provisions is liable on summary conviction to a penalty¹².

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the giving of directions see the Environmental Protection Act 1990 s 161(5), (6); and PARA 61.

3 As to the meaning of 'environmental permit' see PARA 664; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538).

4 As to the meaning of 'waste operation' see PARA 663 note 1; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538; and amended by SI 2009/1799).

5 As to the meaning of 'disposal' see PARA 620 note 12; and as to the treatment of waste see PARA 620 note 12.

6 For these purposes, 'waste' means anything which is waste as defined in EEC Council Directive 75/442 (OJ L194, 25.7.75, p 39) on waste, art 1, Annex 1 (see PARA 33), including anything which is excluded from the scope of that Directive by art 2(1)(b)(iii), but not including anything excluded by the remainder of that article: Environmental Protection Act 1990 s 57(8) (substituted by SI 2005/3026).

7 For these purposes, 'specified' means specified in a direction under the Environmental Protection Act 1990 s 57: s 57(8) (as substituted: see note 6).

8 Environmental Protection Act 1990 s 57(1) (amended by SI 2005/3026; and SI 2007/3538).

9 As to the meaning of 'land' see PARA 620 note 2.

10 Environmental Protection Act 1990 s 57(2) (amended by SI 2005/3026). A direction under the Environmental Protection Act 1990 s 57(2) may require the person who is directed to deliver the waste to pay to the specified person his reasonable costs of treating or disposing of the waste: s 57(4). The Secretary of State may, where the costs of the treatment or disposal of waste are not paid or not fully paid in pursuance of s 57(4) to the person treating or disposing of the waste, pay the costs or the unpaid costs, as the case may be, to that person: s 57(7).

11 Environmental Protection Act 1990 s 57(3).

12 Environmental Protection Act 1990 s 57(5). The penalty is a fine not exceeding level 5 on the standard scale: see s 57(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

A person is not guilty of an offence under any other enactment prescribed by the Secretary of State by regulations made for the purposes of this provision by reason only of anything necessarily done or omitted in

order to comply with a direction under s 57: s 57(6). At the date at which this volume states the law no such regulations are in force.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(5) WASTE COLLECTION/702. Powers to require removal of waste unlawfully deposited.

702. Powers to require removal of waste unlawfully deposited.

If any controlled waste¹ or extractive waste² is deposited³ in or on any land⁴ in the area of a waste regulation authority⁵ or waste collection authority⁶, the authority may, by notice served on him⁷, require the occupier to do either or both of the following⁸, that is:

- 1668 (1) to remove the waste from the land within a specified period not less than a period of 21 days beginning with the service of the notice⁹;
- 1669 (2) to take within such a period specified steps with a view to eliminating or reducing the consequences of the deposit of the waste¹⁰.

A person on whom any such requirements are imposed may, within the period of 21 days, appeal against the requirement to a magistrates' court¹¹. On any such appeal, the court must quash the requirement if it is satisfied that:

- 1670 (a) the appellant neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste¹²; or
- 1671 (b) there is a material defect in the notice¹³.

In any other case, the court must either modify the requirement or dismiss the appeal¹⁴.

Where a person appeals against any requirement, the requirement is of no effect pending the determination of the appeal; and where the court modifies the requirement or dismisses the appeal it may extend the period specified in the notice¹⁵.

If a person on whom a requirement is imposed¹⁶ fails, without reasonable excuse, to comply with the requirement he is liable, on summary conviction, to a penalty¹⁷.

Where a person on whom a requirement has been imposed¹⁸ by an authority fails to comply with the requirement, the authority may do what that person was required to do and may recover from him any expenses reasonably incurred by the authority in doing it¹⁹.

If it appears to a waste regulation authority or waste collection authority that waste has been deposited in or on any land²⁰ and that:

- 1672 (i) in order to remove or prevent pollution of land, water or air²¹, or harm²² to human health, it is necessary that the waste be forthwith removed or other steps taken to eliminate or reduce the consequences of the deposit or both²³; or
- 1673 (ii) there is no occupier of the land or the occupier cannot be found without the authority incurring unreasonable expense²⁴; or
- 1674 (iii) the occupier neither made nor knowingly permitted the deposit of the waste²⁵,

then the authority may remove the waste from the land or take other steps to eliminate or reduce the consequences of the deposit or, as the case may require, to remove the waste and take those steps²⁶.

1 As to the meaning of 'controlled waste' see PARA 624. As to the meaning of 'waste' see PARA 623.

2 As to the meaning of 'extractive waste' see PARA 663 note 1; definition applied by the Environmental Protection Act 1990 s 29(13) (added by SI 2007/3538; and amended by SI 2009/1799).

3 In contravention of the Environmental Protection Act 1990 s 33(1) (see PARA 655) or of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 12 (see PARA 663). As to the meaning of 'deposit' see PARA 655 note 1.

4 As to the meaning of 'land' see PARA 620 note 2.

5 As to the meaning of 'waste regulation authority' see PARA 620 note 6.

6 As to the meaning of 'waste collection authority' see PARA 620 note 8.

7 As to service of notices see the Environmental Protection Act 1990 s 160; and PARA 147.

8 Environmental Protection Act 1990 s 59(1) (amended by SI 2007/3538; and SI 2009/1799). Certain functions under s 59 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

The Secretary of State may issue directions setting out categories of waste to which a waste regulation authority or waste collection authority should give priority for the purposes of exercising its powers under s 59: Environmental Protection Act 1990 s 59A(1) (s 59A added by the Anti-social Behaviour Act 2003 s 55(4)). Priorities set out in directions under the Environmental Protection Act 1990 s 59A(1) may be different for different authorities or areas: s 59A(2) (as so added). However, nothing in s 59A or in any directions issued under it affects any power of an authority under s 59: s 59A(3) (as so added). A waste regulation authority must publicise any direction given to it under s 59A(1) in such manner as it considers appropriate: s 59A(4) (added by SI 2007/3538).

As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Environmental Protection Act 1990 s 59(1)(a). See note 8.

Where the grounds in s 59ZA(2), (3) or (4) are met, a waste regulation authority or waste collection authority may, by notice served on him, require the owner of any land in its area to comply with either or both of the requirements mentioned in s 59(1)(a) and s 59(1)(b) (see heads (1) and (2) in the text): s 59ZA(1) (s 59ZA added by the Clean Neighbourhoods and Environment Act 2005 s 50(2)). The grounds in s 59ZA(2) are: (1) that it appears to the authority that waste has been deposited in or on the land in contravention of s 33(1) (see PARA 655) or of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 12 (see PARA 663); and (2) there is no occupier of the land, or the occupier cannot be found without the authority incurring unreasonable expense: Environmental Protection Act 1990 s 59ZA(2) (as so added; and amended by SI 2007/3538). The grounds in the Environmental Protection Act 1990 s 59ZA(3) are that: (a) the authority has served a notice under s 59(1) imposing a requirement on the occupier of the land; (b) the occupier of the land is not the same person as the owner of the land; and (c) the occupier has failed to comply with the requirement mentioned in head (a) above within the period specified in the notice: s 59ZA(3) (as so added). The grounds in s 59ZA(4) are that: (i) the authority has served a notice under s 59(1) imposing a requirement on the occupier of the land; (ii) the occupier of the land is not the same person as the owner of the land; and (iii) the requirement mentioned in head (i) above has been quashed on the ground specified in s 59(3)(a) (see head (a) in the text): s 59ZA(4) (as so added). The provisions of s 59(2)-(6) (see the text and notes 11-19) apply in relation to requirements imposed under s 59ZA on the owner of the land as they apply in relation to requirements imposed under that provision on the occupier of the land but as if there were an additional ground on which the court must quash a requirement, namely where the court is satisfied that in order to comply with the requirement the appellant would be required to enter the land unlawfully: see s 59ZA(5) (as so added). As to the meaning of 'owner' see PARA 762 note 9; definition applied by s 59ZA(6) (as so added).

10 Environmental Protection Act 1990 s 59(1)(b). See notes 8, 9.

See *Neal Soil Suppliers Ltd v Environment Agency for Wales* [2007] EWHC 2592 (Admin), [2007] All ER (D) 472 (Oct) (taking of specified steps short of removal would normally involve keeping waste on land which was an offence under the Environmental Protection Act 1990 s 33(1) (see PARA 655)).

11 See the Environmental Protection Act 1990 s 59(2).

12 Environmental Protection Act 1990 s 59(3)(a).

13 Environmental Protection Act 1990 s 59(3)(b).

14 Environmental Protection Act 1990 s 59(3).

15 Environmental Protection Act 1990 s 59(4).

16 *le* under the Environmental Protection Act 1990 s 59(1).

17 Environmental Protection Act 1990 s 59(5). The penalty is a fine not exceeding level 5 on the standard scale, and a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence and before the authority has begun to exercise its powers under s 59(6) (see the text and notes 18, 19): see s 59(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

18 *le* under the Environmental Protection Act 1990 s 59(1).

19 Environmental Protection Act 1990 s 59(6).

20 *le* in contravention of the Environmental Protection Act 1990 s 33(1) (see PARA 655) or of the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 12 (see PARA 663).

21 Cf the meaning of 'pollution of the environment': see PARA 655 note 11.

22 As to the meaning of 'harm' see PARA 655 note 11.

23 Environmental Protection Act 1990 s 59(7)(a) (s 59(7) amended by SI 2007/3538).

24 Environmental Protection Act 1990 s 59(7)(b) (amended by the Clean Neighbourhoods and Environment Act 2005 s 50(1)).

25 Environmental Protection Act 1990 s 59(7)(c).

26 Environmental Protection Act 1990 s 59(7) (as amended: see notes 23, 24). Where an authority exercises any of the powers conferred on it by s 59(7), it is entitled to recover the cost incurred by it in removing the waste or taking the steps or both and in disposing of the waste:

54 (1) in a case falling within s 59(7)(a) (see head (i) in the text), from the occupier of the land unless he proves that he neither made nor knowingly caused nor knowingly permitted the deposit of the waste (s 59(8)(a));

55 (2) in any case, from any person who deposited or knowingly caused or knowingly permitted the deposit of any of the waste (s 59(8)(b)),

except such of the cost as the occupier or that person shows was incurred unnecessarily: s 59(8). Any waste removed by an authority under s 59(7) belongs to that authority and may be dealt with accordingly: s 59(9).

An authority may not recover costs under s 59(8) if a compensation order has been made under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1685) in favour of the authority in respect of any part of those costs: Environmental Protection Act 1990 s 59(8A) (s 59(8A), (8B) added by the Clean Neighbourhoods and Environment Act 2005 s 43(2)). The Environmental Protection Act 1990 s 59(8A) does not apply if the order is set aside on appeal: s 59(8B) (as so added).

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703. Interference with waste sites and receptacles for waste.

No person may sort over or disturb:

- 1675 (1) anything deposited at a place for the deposit of waste¹ provided by a waste collection authority², by or under arrangements made with a waste disposal authority³ or by any other local authority or person⁴;
- 1676 (2) anything deposited in a receptacle for waste, whether for public or private use, provided by or under arrangements made with a waste disposal authority, by a parish or community council or by a holder of a waste management licence⁵; or
- 1677 (3) the contents of any receptacle for waste which is placed⁶ on any highway or in any other place with a view to its being emptied⁷,

unless he has the relevant consent or right to do so⁸. The consent or right that is relevant for these purposes is:

- 1678 (a) in the case of head (1) above, the consent of the authority or other person who provides the place for the deposit of the waste⁹;
- 1679 (b) in the case of head (2) above, the consent of the authority or other person who provides the receptacle for the deposit of the waste¹⁰;
- 1680 (c) in the case of head (3) above, the right to the custody of the receptacle, the consent of the person having the right to the custody of the receptacle, or the right conferred by the function by or under Part II of the Environmental Protection Act 1990¹¹ of emptying such receptacles¹².

A person who contravenes these provisions is liable on summary conviction to a penalty¹³.

1 As to the meaning of 'waste' see PARA 623.

2 As to the meaning of 'waste collection authority' see PARA 620 note 8.

3 As to the meaning of 'waste disposal authority' see PARA 620 note 7.

4 Environmental Protection Act 1990 s 60(1)(a) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 4(a)).

5 Environmental Protection Act 1990 s 60(1)(b) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 4(b)). Waste management licences have now been replaced by environmental permits: see PARA 662 et seq.

6 In accordance with a requirement under the Environmental Protection Act 1990 s 46 or s 47: see PARAS 694-695.

7 Environmental Protection Act 1990 s 60(1)(c).

8 Environmental Protection Act 1990 s 60(1). The relevant consent or right is specified in s 60(2): see heads (a)-(c) in the text.

9 Environmental Protection Act 1990 s 60(2)(a) (s 60(2)(a), (b) amended by the Clean Neighbourhoods and Environment Act 2005 s 107, Sch 5 Pt 4).

- 10 Environmental Protection Act 1990 s 60(2)(b) (as amended: see note 9).
- 11 ie the Environmental Protection Act 1990 Pt II (ss 29-78).
- 12 Environmental Protection Act 1990 s 60(2)(c).
- 13 Environmental Protection Act 1990 s 60(3). The penalty is a fine of an amount not exceeding level 3 on the standard scale: see s 60(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(5) WASTE COLLECTION/704. Waste reduction schemes.

704. Waste reduction schemes.

The following provisions come into force subject to the relevant provisions on piloting, report and review¹.

A waste collection authority whose area is in England may make a waste reduction scheme². The purpose of a waste reduction scheme is to provide a financial incentive to produce less domestic waste³ and to recycle⁴ more of what is produced, and accordingly to reduce the amount of residual domestic waste⁵. A waste reduction scheme may cover the whole or any part of the area of a waste collection authority, and may apply to all domestic premises, to domestic premises other than those of a specified⁶ description or to specified descriptions of domestic premises⁷. A waste collection authority may make a waste reduction scheme only if a good recycling service⁸ is available to the occupiers of premises to which the scheme applies, the scheme takes account of the needs of groups who might be unduly disadvantaged by it, and the authority has a strategy for preventing, minimising or otherwise dealing with the unauthorised deposit⁹ or disposal of waste¹⁰. A waste reduction scheme must provide for a financial incentive that the authority considers will be effective to achieve the purpose of the scheme¹¹. The scheme may provide for the incentive to be provided by means of rebates from council tax or by other payments, or by means of relevant charges¹².

A waste reduction scheme may include provision for charging¹³ by reference to the amount of residual domestic waste collected from premises, the size of receptacles used for the purposes of the collection of residual domestic waste from premises, the number of receptacles used for such purposes, or the frequency with which residual domestic waste is collected from premises, or by reference to any combination of those factors¹⁴. The scheme may, in particular, make provision for occupiers of premises (1) to be required, by notice¹⁵, to place residual domestic waste for collection in receptacles of a specified kind; (2) to be required, by such notice, to place such waste in receptacles that are identified by such means as may be specified; or (3) to be required to do both, and for a charge to be made by the authority in respect of the receptacles, the means of identifying them or both¹⁶.

After making a waste reduction scheme and before it is brought into operation, the authority must (a) publish the scheme in such manner as it considers appropriate; and (b) send to the occupier of any premises to which the scheme applies a notice setting out the requirements applicable under the scheme in relation to the collection of domestic waste from premises to which the scheme applies, any rebates or other payments available under the scheme and the manner in which they are to be made and any charges provided for by the scheme and the manner in which they are to be collected¹⁷. A waste reduction scheme must contain provision enabling a person to appeal against any decision affecting, directly or indirectly, that person's entitlement to a rebate or other payment, or liability to pay a charge, under the scheme¹⁸. Where a waste collection authority that operates a waste reduction scheme is not also the waste disposal authority¹⁹, the waste disposal authority may pay to the collection authority contributions of such amounts as the disposal authority may determine towards expenditure of the collection authority attributable to the scheme²⁰.

The Secretary of State may by regulations make provision as to the manner in which the amount of any rebate or other payment is to be determined, and any rebate or payment is to be given, and the manner in which the amount of any charge is to be determined, and any charge is to be collected or enforced²¹. An authority may use for the purpose of administering a waste reduction scheme information it has obtained for the purpose of carrying out its

functions under the enactments relating to council tax²². An authority that has made a waste reduction scheme may amend or revoke the scheme²³. The Secretary of State may issue guidance to waste collection authorities and waste disposal authorities as respects the exercise of their functions under the provisions described above²⁴.

1 The Environmental Protection Act 1990 s 60A, Sch 2AA are prospectively added by the Climate Change Act 2008 s 71, Sch 5 Pt 1 paras 1, 2. The Environmental Protection Act 1990 s 60A, Sch 2AA come into force in accordance with the following provisions: see the Climate Change Act 2008 ss 71(1), (2), 100(2). If a waste collection authority submits to the Secretary of State proposals for a waste reduction scheme and the proposals are approved by the Secretary of State as suitable for piloting one or more aspects of the waste reduction provisions, the Secretary of State may by order designate the area of that authority as a pilot area; and the authority may make a scheme in accordance with the proposals: s 72(1). As to the meaning of 'waste collection authority' see PARA 620 note 8. In these provisions, the 'waste reduction provisions' means the Environmental Protection Act 1990 s 60A, Sch 2AA and any subordinate legislation made under those provisions: Climate Change Act 2008 s 71(3). Not more than five areas may be so designated: s 72(2). The order designating a pilot area must provide that the waste reduction provisions have effect in relation to that area, for the purpose of enabling the authority to make and operate the proposed scheme, for such period as may be specified in the order: s 72(3). Any power to make subordinate legislation or issue guidance under the waste reduction provisions may be exercised so as to make different provision for different pilot areas; and may be exercised at any time after the coming into force of s 72: s 72(4). If a draft of an instrument containing such subordinate legislation would, apart from s 72(5), be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument: s 72(5). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

The Secretary of State must lay before Parliament a report on the operation of the waste reduction provisions in each pilot area: s 73(1). The report must contain, in respect of each pilot area to which it relates (1) a description of the scheme and of the respects in which the provision made by it differed from that made by the schemes in other pilot areas; (2) a copy of the order made by the Secretary of State under s 72 (see above); (3) a description of the respects in which the relevant enactments and guidance applying in that area differed from that applying in other pilot areas, and in areas not designated as pilot areas; and (4) an assessment of the scheme's success or otherwise: s 73(2). The report must also contain a review of the waste reduction provisions in the light of their operation in the pilot area or areas to which the report relates: s 73(3).

If it appears to the Secretary of State that it will not be possible to lay a report under s 73 (see above) in relation to a pilot area before the end of three years beginning with the day the Climate Change Act 2008 is passed (ie 20 November 2008), the Secretary of State must lay before Parliament an interim report in relation to that pilot area before the end of that period: s 74(1). The interim report must contain (a) a description of the scheme and of the respects in which the provision made or to be made by it differs from that made by the schemes in other pilot areas; (b) a copy of the order made by the Secretary of State under s 72 (see above); and (c) a description of the respects in which the relevant enactments and guidance applying in that area differ from that applying in other pilot areas, and in areas not designated as pilot areas: s 74(2). If the scheme has not been implemented, the interim report must contain a description of the progress made towards its implementation: s 74(3). Otherwise, the interim report must contain a description of the scheme's operation; and an assessment of the progress made towards achieving the scheme's objectives, if such an assessment can reasonably be made: s 74(4).

The following provisions apply after s 73 (see above) has been complied with in relation to one or more pilot areas: s 75(1). The Secretary of State may by order (i) provide that the waste reduction provisions come into force generally on such date as is specified in the order; or (ii) make such amendments of the waste reduction provisions as appear to the Secretary of State to be necessary or expedient having regard to the operation of the provisions in the pilot areas, and provide that those provisions as amended come into force generally on such date as is specified in the order: s 75(2). The amendments may include provision conferring power on the Secretary of State to make subordinate legislation: s 75(3). Where the amendments include such provision, they must also include provision (A) for a statutory instrument containing the subordinate legislation to be subject to annulment in pursuance of a resolution of either House of Parliament; or (B) requiring a draft of such an instrument to be laid before and approved by resolution of each House of Parliament before the subordinate legislation is made, as the Secretary of State thinks fit: s 75(4). If the Secretary of State decides not to make an order under s 75(2) (see above), the Secretary of State must make an order repealing the waste reduction provisions: s 75(5). Any order under s 75(2)(b) (see head (ii) above) or s 75(5) (see above) is subject to affirmative resolution procedure: s 75(6). At the date at which this volume states the law, no subordinate legislation had been made under the above provisions.

2 In accordance with the Environmental Protection Act 1990 Sch 2AA: s 60A (as added: see note 1) (not yet in force).

3 'Domestic waste' means household waste from domestic purposes: Environmental Protection Act 1990 Sch 2AA para 15(1) (as added: see note 1) (not yet in force). As to the meaning of 'household waste' see PARA 624. 'Domestic premises' means (1) a building or self-contained part of a building which is used wholly for the purposes of living accommodation; (2) a caravan, as defined in the Caravan Sites and Control of Development Act 1960 s 29(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 610) that usually and for the time being is situated on a caravan site, within the meaning of the Caravan Sites and Control of Development Act 1960, or a moored vessel used wholly for the purposes of living accommodation: Environmental Protection Act 1990 Sch 2AA s 15(1) (as so added). The Secretary of State may by order amend the definition of 'domestic premises' in Sch 2AA para 15(1): Sch 2AA para 15(2) (as so added). An order under Sch 2AA para 15(2) is subject to affirmative resolution procedure: Sch 2AA para 16(1) (as so added). See also Sch 2AA para 16(6); and note 21.

4 As to the meaning of 'recycle' see PARA 620 note 12. References in the Environmental Protection Act 1990 Sch 2AA to recycling include re-using and composting: Sch 2AA para 15(3) (as added: see note 1) (not yet in force).

5 Environmental Protection Act 1990 Sch 2AA para 1(1) (as added: see note 1) (not yet in force). 'Residual domestic waste' means domestic waste that is not waste meeting the conditions for collection by the authority as recyclable waste, or waste for which a charge may be made by virtue of regulations under s 45(3) (see PARA 693): Sch 2AA para 15(1). 'Recyclable waste' means waste that is capable of being recycled: Sch 2AA para 15(1). As to the meaning of 'waste' see PARA 623.

6 'Specified' means specified in the waste reduction scheme: Environmental Protection Act 1990 Sch 2AA para 15(1) (as added: see note 1) (not yet in force).

7 Environmental Protection Act 1990 Sch 2AA para 1(2) (as added: see note 1) (not yet in force).

8 A 'recycling service' means arrangements for the collection of recyclable domestic waste from premises separately from other waste and a 'good' recycling service means a recycling service that meets the standards specified for the purposes of this definition in guidance issued by the Secretary of State: Environmental Protection Act 1990 Sch 2AA para 2(2) (as added: see note 1) (not yet in force). The Secretary of State may by order amend Sch 2AA para 2(1), (2): Sch 2AA para 2(3) (as so added). An order under Sch 2AA para 2(3) is subject to affirmative resolution procedure: Sch 2AA para 16(1) (as so added). See also Sch 2AA para 16(6); and note 21. At the date at which this volume states the law no such order had been made.

9 As to the meaning of 'deposit' see PARA 655 note 1.

10 Environmental Protection Act 1990 Sch 2AA para 2(1) (as added: see note 1) (not yet in force). As to the meaning of 'disposal' see PARA 620 note 12. See note 8.

11 Environmental Protection Act 1990 Sch 2AA para 3(1) (as added: see note 1) (not yet in force).

12 Environmental Protection Act 1990 Sch 2AA para 3(2) (as added: see note 1) (not yet in force). The reference is to charges under Sch 2AA para 4: see note 13.

13 A charge under Environmental Protection Act 1990 Sch 2AA para 4 in respect of a receptacle is in addition to any charge under s 46 (see PARA 694) in respect of the cost of providing the receptacle: Sch 2AA para 4(3) (as added: see note 1) (not yet in force). The amount of any charge under Sch 2AA para 4 need not be related to the authority's costs: Sch 2AA para 4(4) (as so added). The scheme may make provision as to the person or persons by whom any charge is payable: Sch 2AA para 4(5) (as so added). The scheme may require any charge to be paid in advance on the basis of an estimate of the amount that is likely to be payable in respect of any premises or require payments in respect of any charge to be made on account or by instalments: Sch 2AA para 4(6) (as so added). The Secretary of State may by order set a limit on the amount of the charge under Sch 2AA para 4 that may be imposed in respect of any premises in any financial year: Sch 2AA para 5(1) (as so added). Section 161(3) (see PARA 61) applies in relation to an order under Sch 2AA para 5(1): Sch 2AA para 16(2) (as so added). An order under Sch 2AA para 5(1) is subject to affirmative resolution procedure if it is the first order to be made under Sch 2AA para 5(1), or it increases the limit for the time being set by an order under Sch 2AA para 5(1) by more than is necessary to reflect changes in the value of money since that limit was set: Sch 2AA para 16(3) (as so added). A failure to pay a charge under Sch 2AA para 4 does not affect the authority's duty under s 45(1)(a) (see PARA 693): Sch 2AA para 5(2) (as so added). Section 45(3) (see PARA 693) has effect subject to Sch 2AA para 4: Sch 2AA para 5(3) (as so added). From year to year, and taking one year with another, the aggregate amount of charges under a waste reduction scheme must not exceed the aggregate amount of the rebates or other payments under the scheme: Sch 2AA para 6(1) (as so added). The Secretary of State may by order amend Sch 2AA para 6(1): Sch 2AA para 6(2) (as so added). An order under Sch 2AA para 6(2) is subject to affirmative resolution procedure: Sch 2AA para 16(1) (as so added). See also Sch 2AA para 16(6); and note 21. Any order under Sch 2AA para 6(2) may make any amendments of Sch 2AA para 4(4) (see above) that appear to the Secretary of State to be necessary or expedient in consequence of, or in connection with, the amendment of Sch 2AA para 6(1): Sch 2AA para 6(3) (as so added). A waste collection

authority that operates a waste reduction scheme must keep a separate account of any rebates or other payments under the scheme, and any charges received by it under the scheme: Sch 2AA para 9(1) (as so added). Any person interested may at any reasonable time and without payment inspect the account and make copies of it or any part of it: Sch 2AA para 9(2) (as so added). A person having custody of the account who intentionally obstructs a person in the exercise of the rights conferred by Sch 2AA para 9(2) commits an offence: Sch 2AA para 9(3) (as so added). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 2AA para 9(4) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

14 Environmental Protection Act 1990 Sch 2AA para 4(1) (as added: see note 1) (not yet in force).

15 le notice under the Environmental Protection Act 1990 s 46: see PARA 694.

16 Environmental Protection Act 1990 Sch 2AA para 4(2) (as added: see note 1) (not yet in force).

17 Environmental Protection Act 1990 Sch 2AA para 7(1)-(3) (as added: see note 1) (not yet in force).

18 Environmental Protection Act 1990 Sch 2AA para 8 (as added: see note 1) (not yet in force).

19 As to the meaning of 'waste disposal authority' see PARA 620 note 7.

20 Environmental Protection Act 1990 Sch 2AA para 10(1) (as added: see note 1) (not yet in force). The collection authority must supply to the disposal authority such information as the disposal authority may reasonably require for the purpose of determining amounts under Sch 2AA para 10: Sch 2AA para 10(2) (as so added).

21 Environmental Protection Act 1990 Sch 2AA para 11(1) (as added: see note 1) (not yet in force). The regulations may in particular provide (1) for appeals against determinations or any failure to make a determination; (2) for the appointment of persons or bodies to hear appeals; and (3) for charges to be recoverable, if a county court so orders, as if they were payable under a county court order: Sch 2AA para 11(2) (as so added). The regulations may include provision (a) for integrating the administration of the scheme with the administration of council tax; and (b) for that purpose modifying, to such extent as appears to the Secretary of State to be necessary or expedient, any of the enactments relating to council tax; and in head (b) above 'modifying' includes making additions, amendments or omissions: Sch 2AA para 11(3) (as so added). The regulations may in particular provide (i) for including material relating to the scheme in the notice containing the council tax demand; (ii) for applying to questions arising under the scheme the procedure for appeals about liability to council tax; and (iii) for applying to any liability under the scheme the procedures for the enforcement of liability for council tax: Sch 2AA para 11(4) (as so added). At the date at which this volume states the law no such regulations had been made.

Section 161(2) (see PARA 61) applies in relation to regulations under Sch 2AA para 11, although regulations under Sch 2AA para 11 are subject to affirmative resolution procedure if they modify an enactment contained in an Act of Parliament: see Sch 2AA para 16(4), (5) (as so added). 'Enactment' includes an enactment contained in subordinate legislation: Sch 2AA para 15(1) (as so added). Where an order or regulations are subject to affirmative resolution procedure the Secretary of State must not make the order or regulations unless a draft of the statutory instrument containing them has been laid before and approved by resolution of each House of Parliament: Sch 2AA para 16(6) (as so added).

22 Environmental Protection Act 1990 Sch 2AA para 12 (as added: see note 1) (not yet in force).

23 Environmental Protection Act 1990 Sch 2AA para 13(1) (as added: see note 1) (not yet in force). After amending a scheme and before bringing the amendment into operation, the authority must (1) publish the amended scheme in such manner as it thinks appropriate; and (2) if the amendment affects any of the matters previously notified to occupiers, send to the occupier of any premises to which the scheme applies a notice setting out the effect of the amendment: Sch 2AA para 13(2) (as so added). The amendment or revocation of a scheme does not affect any entitlement or liability under the scheme in respect of a period before the amendment or revocation takes effect: Sch 2AA para 13(3) (as so added). The revocation of a scheme does not affect the duty of the authority to comply with Sch 2AA para 6(1) (see note 13): Sch 2AA para 13(4) (as so added).

24 Environmental Protection Act 1990 Sch 2AA para 14(1) (as added: see note 1) (not yet in force). Any such guidance issued (1) must be published in such manner as the Secretary of State considers appropriate; and (2) may be amended or replaced by further guidance, or revoked: Sch 2AA para 14(2) (as so added). In exercising their functions under Sch 2AA waste collection authorities and waste disposal authorities must have regard to any guidance in force under Sch 2AA para 14: Sch 2AA para 14(3) (as so added). At the date at which this volume states the law no such guidance had been issued.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(6) HAZARDOUS WASTE AND NON-CONTROLLED WASTE/705. Special provision with respect to certain dangerous or intractable waste.

(6) HAZARDOUS WASTE AND NON-CONTROLLED WASTE

705. Special provision with respect to certain dangerous or intractable waste.

The Secretary of State¹ must by regulations² list any controlled waste³ in England which:

- 1681 (1) is not listed as a hazardous waste⁴ in the Hazardous Waste List⁵; and
- 1682 (2) appears to him to display any of the properties listed in the Hazardous Waste Directive⁶.

The Welsh Ministers⁷ must by regulations⁸ list any controlled waste in Wales which:

- 1683 (a) is not listed as a hazardous waste in the Hazardous Waste List⁹; and
- 1684 (b) appears to them to display any of the properties listed in the Hazardous Waste Directive¹⁰.

1 As to the Secretary of State see PARA 58.

2 As to the regulations see the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894. See also PARA 624.

The Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, set out the regime for the control and tracking of the movement of hazardous waste for the purpose of implementing EEC Council Directive 91/689 (OJ L337, 31.12.91, p 20) on hazardous waste (see PARA 33). See also the Hazardous Waste (Wales) Regulations 2005, SI 2005/1806 (amended by SI 2006/937; SI 2007/3538; and SI 2009/2861). The Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, include provisions relating to: the definition of 'hazardous waste' and how regulations apply to such waste (see Pts 1-3 (regs 1-17) (amended by SI 2006/937; SI 2007/3538; and SI 2009/507)); a ban on mixing of hazardous waste without a permit and a duty to separate mixed wastes (see the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, Pt 4 (regs 18-20)); notification to Environment Agency of where waste is produced or removed (see Pt 5 (regs 21-32) (amended by SI 2007/3538; and SI 2009/507)); requirements in regard to movement of hazardous waste, including consignment codes, documents to be completed for consignments, rejected consignments, time limits and cross-border movements (see the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, Pt 6 (regs 33-46) (amended by SI 2007/3538; SI 2007/3476; and SI 2009/507)); a requirement for records to be kept by producers, holders, carriers, consignors and consignees of such waste (see the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, Pt 7 (regs 47-55) (amended by SI 2009/507)); inspection by the Environment Agency and its other functions (see the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, Pt 8 (regs 56-60)); holders' duties where there is an emergency or grave danger (see Pt 9 (regs 61-63) (amended by SI 2009/507)); and offences and penalties (see the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, Pt 10 (regs 64-70) (amended by SI 2007/3476)). As to the Environment Agency see PARA 68 et seq.

See also the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008, SI 2008/37.

3 As to the meaning of 'controlled waste' see PARA 624. As to the meaning of 'waste' see PARA 623.

4 As to the meaning of 'hazardous waste' see PARA 624.

5 Environmental Protection Act 1990 s 62A(1)(a) (s 62A added by SI 2005/894). For these purposes, 'Hazardous Waste List' means the list referred to in EEC Council Directive 91/689 (OJ L337, 31.12.91, p 20) on hazardous waste art 1(4) (see PARA 33); Environmental Protection Act 1990 s 62A(3) (as so added). This is separate and distinct from the Lists of Wastes (England) Regulations 2005, SI 2005/895: see PARA 623 note 3.

6 Environmental Protection Act 1990 s 62A(1)(b) (as added: see note 5). The reference in the text is a reference to EEC Council Directive 91/689 (OJ L337, 31.12.91, p 20) on hazardous waste, Annex III: see PARA 33.

7 As to the Welsh Ministers see PARA 59.

8 As to the regulations see the Hazardous Waste (Wales) Regulations 2005, SI 2005/1806; note 2; and see also PARA 624.

9 Environmental Protection Act 1990 s 62A(2)(a) (as added: see note 5). Regulations under s 62A must be made by statutory instrument but s 161(2) (see PARA 61) does not apply to such regulations: s 62A(4) (as so added).

10 Environmental Protection Act 1990 s 62A(2)(b) (as added: see note 5). As to the Directive see note 6.

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706. Radioactive substances.

Except as provided by regulations¹ made by the Secretary of State² under this provision, nothing in Part II of the Environmental Protection Act 1990³ applies to radioactive waste⁴; but regulations may:

- 1685 (1) provide for prescribed provisions of Part II of the Environmental Protection Act 1990 to have effect with such modifications as the Secretary of State considers appropriate for the purposes of dealing with such radioactive waste⁵;
- 1686 (2) make such modifications of the Radioactive Substances Act 1993 and any other Act as the Secretary of State considers appropriate⁶.

1 As to the regulations made under the Environmental Protection Act 1990 s 78 see the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894; the Hazardous Waste (Wales) Regulations 2005, SI 2005/1806; and PARAS 624, 705.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 I.e. the Environmental Protection Act 1990 Pt II (ss 29-78).

4 Environmental Protection Act 1990 s 78 (amended by the Radioactive Substances Act 1993 Sch 4 para 7). This provision refers to radioactive waste within the meaning of the Radioactive Substances Act 1993: see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450 et seq.

5 Environmental Protection Act 1990 s 78(a). See also note 6.

6 Environmental Protection Act 1990 s 78(b) (as amended: see note 4). See also the similar provisions of the Control of Pollution Act 1974 s 30(5). As from a day to be appointed, s 30 is repealed by the Environmental Protection Act 1990 Sch 16 Pt II. At the date at which this volume states the law no such day had been appointed.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(6) HAZARDOUS WASTE AND NON-CONTROLLED WASTE/707. Disposal of waste by the United Kingdom Atomic Energy Authority.

707. Disposal of waste by the United Kingdom Atomic Energy Authority.

Without prejudice to the other powers of the United Kingdom Atomic Energy Authority¹, that authority has power to engage in the United Kingdom² and elsewhere in such activities relating to the treatment or disposal of waste³ and other matter as the Secretary of State⁴ may from time to time specify by notice given to the authority⁵, and to do anything which appears to the authority to be appropriate for the purpose of exercising that power⁶.

1 As to the constitution and general powers of the United Kingdom Atomic Energy Authority see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1363 et seq.

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 'Waste' is not defined for these purposes. As to the meaning of 'waste' generally see PARA 623.

4 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

5 Control of Pollution Act 1974 s 101(a).

6 Control of Pollution Act 1974 s 101(b).

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(7) APPEALS

708. Appeals.

An appeal against any decision of a magistrates' court under Part II of the Environmental Protection Act 1990¹ (other than a decision made in criminal proceedings) lies to the Crown Court² at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Crown Court by virtue of any other enactment³. Where a person appeals to the Crown Court against a decision of a magistrates' court dismissing an appeal against any requirement imposed under Part II of the Environmental Protection Act 1990 which was suspended pending determination of that appeal, the requirement is again to be suspended pending the determination of the appeal to the Crown Court⁴.

Where an appeal against a decision of any authority lies to a magistrates' court by virtue of any provision of Part II of the Environmental Protection Act 1990, it is the duty of the authority to include in any document by which it notifies the decision to the person concerned a statement indicating that such an appeal lies and specifying the time within which it must be brought⁵.

Where, on an appeal to any court against or arising out of a decision of any authority under Part II of the Environmental Protection Act 1990, the court varies or reverses the decision, it is the duty of the authority to act in accordance with the court's decision⁶.

1 lie the Environmental Protection Act 1990 Pt II (ss 29-78).

2 As to the Crown Court see **COURTS** vol 10 (Reissue) PARA 621 et seq.

3 Environmental Protection Act 1990 s 73(1).

4 Environmental Protection Act 1990 s 73(3).

5 Environmental Protection Act 1990 s 73(4).

6 Environmental Protection Act 1990 s 73(5).

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(8) TRANSPORT OF WASTE

709. Offence of transporting controlled waste without registering.

Under the Control of Pollution (Amendment) Act 1989¹, it is an offence for any person who is not a registered carrier² of controlled waste³, in the course of any business of his or otherwise with a view to profit, to transport⁴ any controlled waste to or from any place in Great Britain⁵.

However, a person is not guilty of an offence in respect of:

- 1687 (1) the transport of controlled waste within the same premises between different places in those premises⁶;
- 1688 (2) the transport to a place in Great Britain of controlled waste which has been brought from a country or territory outside Great Britain and is not landed in Great Britain until it arrives at that place⁷;
- 1689 (3) the transport by air or sea of controlled waste from a place in Great Britain to a place outside Great Britain⁸.

The Secretary of State may by regulations⁹ provide that a person is not required for these purposes to be a registered carrier of controlled waste if: (a) he is a prescribed¹⁰ person or a person of such a description as may be prescribed¹¹; or (b) without prejudice to head (a) above, he is a person in relation to whom the prescribed requirements under the law of any other member state¹² are satisfied¹³.

In proceedings against any person for an offence under these provisions in respect of the transport of any controlled waste it is a defence for that person to show:

- 1690 (i) that the waste was transported in an emergency¹⁴ of which notice was given, as soon as practicable after it occurred, to the regulation authority¹⁵ in whose area the emergency occurred¹⁶; or
- 1691 (ii) that he neither knew nor had reasonable grounds for suspecting that what was being transported was controlled waste and took all such steps as it was reasonable to take for ascertaining whether it was such waste¹⁷.

1 The Control of Pollution (Amendment) Act 1989 does not extend to Northern Ireland (see s 11 (amended by the Environment Act 1995 s 112(2), Sch 24; and the Statute Law (Repeals) Act 2004)), nor does it apply in relation to the Isles of Scilly, although an order may be made providing for the application of any of its provisions to those Isles (see the Control of Pollution (Amendment) Act 1989 s 10A (added by the Environment Act 1995 s 118(1))). At the date at which this volume states the law no such order had been made.

There must be paid out of money provided by Parliament: (1) any administrative expenses incurred by the Secretary of State in consequence of the Control of Pollution (Amendment) Act 1989; and (2) any increase attributable to that Act in the sums payable out of money so provided under any other Act: s 10. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. Section 10 does not apply in so far as such a sum is payable by the Welsh Ministers.

2 As to registration of carriers see PARA 710.

3 As to the meaning of 'controlled waste' see PARA 624; definition applied by the Control of Pollution (Amendment) Act 1989 s 9(1) (amended by the Environmental Protection Act 1990 Sch 15 para 31).

4 'Transport', in relation to any controlled waste, includes the transport of that waste by road or rail or by air, sea or inland waterway but does not include moving that waste from one place to another by means of any pipe or other apparatus that joins those two places: Control of Pollution (Amendment) Act 1989 s 9(1). 'Road' has the same meaning as in the Road Traffic Act 1988 (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 206): Control of Pollution (Amendment) Act 1989 s 9(1).

5 Control of Pollution (Amendment) Act 1989 s 1(1). As to the meaning of 'Great Britain' see PARA 1 note 2. A person guilty of an offence under s 1 is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 1(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

The correct test to establish guilt is in whose name and under whose control was the carriage being undertaken, the registration being that of the carrier not the vehicle: *Cosmick Transport Services Ltd v Bedfordshire County Council* [1997] RTR 132, [1996] Env LR 78, DC.

6 Control of Pollution (Amendment) Act 1989 s 1(2)(a).

7 Control of Pollution (Amendment) Act 1989 s 1(2)(b).

8 Control of Pollution (Amendment) Act 1989 s 1(2)(c).

9 The powers of the Secretary of State under the Control of Pollution (Amendment) Act 1989 to make regulations or orders are exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament (s 8(1) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 para 11(1), (2))); and the powers of the Welsh Ministers to make regulations and orders under the Control of Pollution (Amendment) Act 1989 s 5 (see PARA 712) or s 5C (see PARA 713) are also exercisable by statutory instrument (s 8(1A) (added by the Clean Neighbourhoods and Environment Act 2005 Sch 4 para 11(1), (3))). Regulations or orders made in exercise of any such power may: (1) contain such supplemental, consequential and transitional provision as the person making the regulations or order considers appropriate; and (2) make different provision for different cases (including different provision for different persons, circumstances or localities): Control of Pollution (Amendment) Act 1989 s 8(2) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 para 11(1), (4)(a), (b)).

10 'Prescribed' means prescribed by regulations: Control of Pollution (Amendment) Act 1989 s 9(1).

11 Control of Pollution (Amendment) Act 1989 s 1(3)(a). As to the regulations made see the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991, SI 1991/1624 (amended by SI 1992/588; SI 1994/1056; SI 1994/1137; SI 1996/593; SI 1996/972; SI 1998/605; SI 2005/894; SI 2006/937; and SI 2007/3538). See also the Controlled Waste Regulations 1992, SI 1992/588 (see PARA 624); the Waste Management Licensing Regulations 1994, SI 1994/1056, but these for the most part have been replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 662 et seq); and see the Waste Management (England and Wales) Regulations 2006, SI 2006/937.

12 I.e a state which is a member of the European Union.

13 Control of Pollution (Amendment) Act 1989 s 1(3)(b). At the date at which this volume states the law no regulations had been made under s 1(3)(b).

14 For these purposes, 'emergency', in relation to the transport of any controlled waste, means any circumstances in which, in order to avoid, remove or reduce any serious danger to the public or serious risk of damage to the environment, it is necessary for the waste to be transported from one place to another without the use of a registered carrier of such waste: Control of Pollution (Amendment) Act 1989 s 1(6).

15 'Regulation authority' means, in relation to England and Wales, the Environment Agency; and any reference to the area of a regulation authority is accordingly to be construed as a reference to any area in England and Wales: Control of Pollution (Amendment) Act 1989 s 9(1) (definition added by the Environmental Protection Act 1990 Sch 15 para 31; and substituted by the Environment Act 1995 Sch 22 para 37). As to the Environment Agency see PARA 68 et seq.

16 Control of Pollution (Amendment) Act 1989 s 1(4)(a) (amended by the Environmental Protection Act 1990 Sch 15 para 31; and the Clean Neighbourhoods and Environment Act 2005 s 35(1)).

17 Control of Pollution (Amendment) Act 1989 s 1(4)(b) (amended by the Clean Neighbourhoods and Environment Act 2005 s 35(1)(b), Sch 5 Pt 4).

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710. Registration of carriers.

The Secretary of State¹ may by regulations² make provision for the registration of persons with regulation authorities³ as carriers of controlled waste⁴ and, for that purpose, for the establishment and maintenance by such authorities, in accordance with the regulations, of such registers as may be prescribed⁵. Such regulations may:

- 1692 (1) make provision with respect to applications for registration⁶;
- 1693 (2) impose requirements with respect to the manner in which regulation authorities maintain registers of carriers of controlled waste⁷;
- 1694 (3) provide for the issue of a certificate of registration to a registered carrier of controlled waste both on his registration and on the making of any alteration of any entry relating to him in a register of such carriers⁸;
- 1695 (4) provide that the provision by a regulation authority to a registered carrier of such copies of a certificate of registration as are provided in addition to the certificate provided in pursuance of provision made by virtue of head (3) above is to be made subject to the payment of a charge imposed under the regulations⁹.

The above regulations¹⁰ may include provision for:

- 1696 (a) the registration of a person as a carrier of controlled waste to be subject to conditions relating to the vehicles used by him in transporting such waste¹¹; or
- 1697 (b) the revocation by a regulation authority of the registration of a carrier of controlled waste who has breached a condition imposed on him under head (a) above¹².

Nothing in any such regulations is to authorise a regulation authority to refuse an application for registration except where:

- 1698 (i) there has, in relation to that application, been a contravention of the requirements of any regulations made by virtue of head (1) above¹³; or
- 1699 (ii) the applicant or another relevant person has been convicted of a prescribed offence¹⁴ and, in the opinion of the authority, it is undesirable for the applicant to be authorised to transport controlled waste¹⁵.

Nor is anything in any such regulations to authorise any regulation authority to revoke any person's registration as a carrier of controlled waste except where in accordance with regulations under head (a) and (b) above or:

- 1700 (A) that person or another relevant person has been convicted of a prescribed offence¹⁶; and
- 1701 (B) in the opinion of the authority, it is undesirable for the registered carrier to continue to be authorised to transport controlled waste¹⁷.

However, registration in accordance with any such regulations ceases to have effect after such period as may be prescribed or if the registered carrier gives written notice requiring the removal of his name from the register¹⁸.

Nothing in the regulations is to have the effect of bringing the revocation of any person's registration as a carrier of controlled waste into force except after the end of such period as may be prescribed for appealing against the revocation¹⁹; or where that person has indicated, within that period, that he does not intend to make or continue with an appeal²⁰.

The regulations may require every registration in respect of a business which is or is to be carried on by a partnership to be a registration of all the partners and to cease to have effect if any of the partners ceases to be registered or if any person who is not registered becomes a partner²¹.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the power to make regulations under the Control of Pollution (Amendment) Act 1989 see PARA 709 note 9.

3 As to the meaning of 'regulation authority' see PARA 709 note 15.

4 As to the meaning of 'controlled waste' see PARA 624; definition applied by the Control of Pollution (Amendment) Act 1989 s 9(1) (amended by the Environmental Protection Act 1990 Sch 15 para 31).

5 Control of Pollution (Amendment) Act 1989 s 2(1) (amended by the Environmental Protection Act 1990 Sch 15 para 31). 'Prescribed' means prescribed by regulations: Control of Pollution (Amendment) Act 1989 s 9(1). The provisions of s 2(2)-(4B) (see the text and notes 6-12) are without prejudice to the generality of s 2(1): s 2(5) (amended by the Clean Neighbourhoods and Environment Act 2005 s 36(1), (6)).

As to the regulations made see the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991, SI 1991/1624 (see PARA 709 note 11); and the Waste Management Licensing Regulations 1994, SI 1994/1056, but these for the most part have been replaced by the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 662 et seq). See also the Transfrontier Shipment of Waste Regulations 2007, SI 2007/1711 (amended by SI 2007/3538; and SI 2008/9).

6 Control of Pollution (Amendment) Act 1989 s 2(2)(a). Provision contained in any regulations by virtue of s 2(2)(a) may, in particular, include provision which:

56 (1) prescribes the manner of determining the regulation authority to which an application is to be made (s 2(3)(a) (amended by the Environmental Protection Act 1990 Sch 15 para 31));

57 (2) prescribes the period within which an application for the renewal of any registration which is due to expire is to be made (Control of Pollution (Amendment) Act 1989 s 2(3)(c));

58 (3) imposes requirements with respect to the information which is to be provided by an applicant to the authority to which his application is made (s 2(3)(d)).

Without prejudice to the generality of head (3) above, the power to impose requirements with respect to information under head (3) above includes power to make provision requiring an application to be accompanied by such information as may reasonably be required by the regulation authority to which it is to be made: s 2(3A) (added by the Environment Act 1995 s 120, Sch 22 para 37; and amended by the Clean Neighbourhoods and Environment Act 2005 s 36(1), (4)(a), (b), Sch 5 Pt 4).

7 Control of Pollution (Amendment) Act 1989 s 2(2)(b) (amended by the Environmental Protection Act 1990 Sch 15 para 31).

Provision contained in any regulations by virtue of the Control of Pollution (Amendment) Act 1989 s 2(2)(b) may, in particular, include provision:

59 (1) specifying or describing the information to be incorporated in any register maintained by a regulation authority in pursuance of any such regulations (s 2(4)(a) (amended by the Environmental Protection Act 1990 Sch 15 para 31));

- 60 (2) requiring a registered carrier of controlled waste to notify a regulation authority which maintains such a register of any change of circumstances affecting information contained in the entry relating to that carrier in that register (Control of Pollution (Amendment) Act 1989 s 2(4)(b) (amended by the Environmental Protection Act 1990 Sch 15 para 31));
- 61 (3) requiring a regulation authority, to such extent and in such manner as may be prescribed, to make the contents of any such register available for public inspection free of charge (Control of Pollution (Amendment) Act 1989 s 2(4)(c) (amended by the Environmental Protection Act 1990 Sch 15 para 31)); and
- 62 (4) requiring such an authority, on payment of such charges as may be imposed under the regulations, to provide such copies of the contents of any such register to any person applying for a copy as may be prescribed (Control of Pollution (Amendment) Act 1989 s 2(4)(d)).

8 Control of Pollution (Amendment) Act 1989 s 2(2)(c) (amended by the Clean Neighbourhoods and Environment Act 2005 s 36(1), (2)(a), Sch 5 Pt 4).

9 Control of Pollution (Amendment) Act 1989 s 2(2)(e) (amended by the Environmental Protection Act 1990 Sch 15 para 31; and the Clean Neighbourhoods and Environment Act 2005 s 36(1), (2)(c), Sch 5 Pt 4)).

10 In regulations under the Control of Pollution (Amendment) Act 1989 s 2.

11 Control of Pollution (Amendment) Act 1989 s 2(4A)(a) (s 2(4A), (4B) added by the Clean Neighbourhoods and Environment Act 2005 s 36(1), (5)). Provision contained in any regulations under the Control of Pollution (Amendment) Act 1989 s 2 by virtue of s 2(4A) may, in particular, include provision: (1) for inspection by a regulation authority of the vehicles of registered carriers of controlled waste for the purpose of ensuring compliance with conditions imposed under s 2(4A)(a) (s 2(4B)(a) (as so added)); (2) for a regulation authority to impose charges on registered carriers of controlled waste in respect of such inspections (s 2(4B)(b) (as so added)).

12 Control of Pollution (Amendment) Act 1989 s 2(4A)(b) (as added: see note 11). See also note 11.

13 Control of Pollution (Amendment) Act 1989 s 3(1)(a) (s 3(1) amended by the Environmental Protection Act 1990 Sch 15 para 31). As to regulations see note 5.

14 In relation to any applicant for registration or registered carrier, another relevant person is to be treated for the purposes of any provision made by virtue of the Control of Pollution (Amendment) Act 1989 s 3(1) or s 3(2) (see the text and notes 16-18) as having been convicted of a prescribed offence if:

- 63 (1) any person has been convicted of a prescribed offence committed by him in the course of his employment by the applicant or registered carrier or in the course of the carrying on of any business by a partnership one of the members of which was the applicant or registered carrier (s 3(5)(a));
- 64 (2) a body corporate has been convicted of a prescribed offence committed at a time when the applicant or registered carrier was a director, manager, secretary or other similar officer of that body corporate (s 3(5)(b)); or
- 65 (3) where the applicant or registered carrier is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate: (a) has been convicted of a prescribed offence (s 3(5)(c)(i)); or (b) was a director, manager, secretary or other similar officer of another body corporate at a time when a prescribed offence for which that other body corporate has been convicted was committed (s 3(5)(c)(ii)).

15 Control of Pollution (Amendment) Act 1989 s 3(1)(b) (as amended: see note 13). In determining for the purposes of any provision made by virtue of s 3(1) or s 3(2) (see the text and notes 16-18) whether it is desirable for any individual to be or to continue to be authorised to transport controlled waste, a regulation authority must have regard, in a case in which a person other than the individual has been convicted of a prescribed offence, to whether that individual has been a party to the carrying on of a business in a manner involving the commission of prescribed offences: s 3(6) (amended by the Environmental Protection Act 1990 Sch 15 para 31). As to the meaning of 'transport' see PARA 709 note 4.

16 Control of Pollution (Amendment) Act 1989 s 3(2)(a) (s 3(2) amended by the Environmental Protection Act 1990 Sch 15 para 31; and the Clean Neighbourhoods and Environment Act 2005 s 36(1), (7)).

17 Control of Pollution (Amendment) Act 1989 s 3(2)(b) (as amended: see note 16).

- 18 Control of Pollution (Amendment) Act 1989 s 3(2) (as amended: see note 16).
- 19 Control of Pollution (Amendment) Act 1989 s 3(4)(a). As to appeals see s 4; and PARA 711.
- 20 Control of Pollution (Amendment) Act 1989 s 3(4)(b).
- 21 Control of Pollution (Amendment) Act 1989 s 3(3).

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711. Appeals against refusal of registration etc.

Where a person has applied to a regulation authority¹ to be registered², he may appeal to the Secretary of State³ if: (1) his application is refused⁴; or (2) the relevant period⁵ from the making of the application has expired without his having been registered⁶.

Similarly, a person whose registration as a carrier of controlled waste⁷ has been revoked may appeal against the revocation to the Secretary of State⁸.

On an appeal under these provisions, the Secretary of State may, as he thinks fit, either dismiss the appeal or give the regulation authority in question a direction to register the appellant or, as the case may be, to cancel the revocation⁹. Where, on an appeal made by virtue of head (2) above, the Secretary of State dismisses an appeal, he must direct the regulation authority in question not to register the appellant¹⁰. It is the duty of a regulation authority to comply with any direction under these provisions¹¹.

The Secretary of State may by regulations¹² make provision as to the manner in which and time within which an appeal under these provisions is to be made and as to the procedure to be followed on any such appeal¹³.

Where an appeal is made in accordance with regulations under these provisions:

- 1702 (a) by a person whose appeal is in respect of such an application for the renewal of his registration as was made¹⁴ at a time when he was already registered¹⁵; or
- 1703 (b) by a person whose registration has been revoked¹⁶,

that registration continues in force, notwithstanding the expiry of the prescribed¹⁷ period or the revocation, until the appeal is disposed of¹⁸.

1 As to the meaning of 'regulation authority' see PARA 709 note 15.

2 In accordance with any regulations under the Control of Pollution (Amendment) Act 1989 s 2: see PARA 710.

3 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Control of Pollution (Amendment) Act 1989 s 4(1)(a) (s 4(1) amended by the Environmental Protection Act 1990 Sch 15 para 31).

The Control of Pollution (Amendment) Act 1989 s 4 is subject to the Environment Act 1995 s 114 (delegation or reference of appeals etc) (see PARA 65): Control of Pollution (Amendment) Act 1989 s 4(9) (added by the Environment Act 1995 Sch 22 para 37).

5 For the purposes of the Control of Pollution (Amendment) Act 1989 s 4(1), the relevant period is two months or, except in the case of an application for the renewal of his registration by a person who is already registered, such longer period as may be agreed between the applicant and the regulation authority in question: s 4(1) (as amended: see note 4).

6 Control of Pollution (Amendment) Act 1989 s 4(1)(b) (as amended: see note 4).

7 As to the meaning of 'controlled waste' see PARA 624; definition applied by the Control of Pollution (Amendment) Act 1989 s 9(1) (amended by the Environmental Protection Act 1990 Sch 15 para 31).

- 8 Control of Pollution (Amendment) Act 1989 s 4(2).
- 9 Control of Pollution (Amendment) Act 1989 s 4(3) (amended by the Environmental Protection Act 1990 Sch 15 para 31).
- 10 Control of Pollution (Amendment) Act 1989 s 4(4) (amended by the Environmental Protection Act 1990 Sch 15 para 31).
- 11 Control of Pollution (Amendment) Act 1989 s 4(5) (amended by the Environmental Protection Act 1990 Sch 15 para 31).
- 12 As to the power to make regulations under the Control of Pollution (Amendment) Act 1989 see PARA 709 note 9.
- 13 Control of Pollution (Amendment) Act 1989 s 4(6). As to the regulations made see the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991, SI 1991/1624; and PARA 709 note 11.
- 14 In accordance with regulations under the Control of Pollution (Amendment) Act 1989 s 2: see PARA 710.
- 15 Control of Pollution (Amendment) Act 1989 s 4(7)(a).
- 16 Control of Pollution (Amendment) Act 1989 s 4(7)(b).
- 17 'Prescribed' means prescribed by regulations: Control of Pollution (Amendment) Act 1989 s 9(1).
- 18 Control of Pollution (Amendment) Act 1989 s 4(7). For these purposes, an appeal is disposed of when any of the following occurs, that is to say:
 - 66 (1) the appeal is withdrawn (s 4(8)(a));
 - 67 (2) the appellant is notified by the Secretary of State or the regulation authority in question that his appeal has been dismissed (s 4(8)(b) (amended by the Environmental Protection Act 1990 Sch 15 para 31)); or
 - 68 (3) the regulation authority complies with any direction of the Secretary of State to renew the appellant's registration or to cancel the revocation (Control of Pollution (Amendment) Act 1989 s 4(8)(c) (amended by the Environmental Protection Act 1990 Sch 15 para 31)).

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712. Enforcement.

Where an authorised officer of a regulation authority¹ or a constable² reasonably believes that controlled waste³ has been, is being or is about to be transported⁴ in contravention of the registration requirement⁵, the authorised officer or constable may⁶:

- 1704 (1) require any person appearing to him to be or to have been engaged in transporting that waste to produce his (or, as the case may be, his employer's) authority to do so⁷;
- 1705 (2) search any vehicle⁸ that appears to him to be a vehicle that has been, is being or is about to be used for transporting that waste⁹;
- 1706 (3) carry out tests on anything found in any such vehicle (including by taking away samples for testing of anything so found)¹⁰;
- 1707 (4) seize any such vehicle and any of its contents¹¹.

A person commits an offence¹² if: (a) he fails without reasonable excuse to comply with a requirement imposed under head (1) above¹³; (b) he fails without reasonable excuse to give any assistance that an authorised officer or constable may reasonably request in the exercise of a power under that head¹⁴; (c) he otherwise intentionally obstructs an authorised officer or constable in the exercise of a power under that head¹⁵. A person also commits an offence if he fails without reasonable excuse to comply with a requirement to give certain information on request when stopped¹⁶; or he gives information so required that is to his knowledge false or misleading in a material way, or that is given recklessly and is false or misleading in a material way¹⁷.

Where under the above powers¹⁸ an authorised officer of a regulation authority or a constable seizes a vehicle or its contents ('seized property') on behalf of a regulation authority, the authority may remove the seized property to such a place as the authority considers appropriate¹⁹. A regulation authority must deal with any seized property in accordance with regulations made by the appropriate person²⁰. The appropriate person may issue guidance to regulation authorities in relation to the performance of their functions under such regulations²¹.

1 In the Control of Pollution (Amendment) Act 1989 ss 5-7, 'regulation authority' means a waste collection authority falling within the Environmental Protection Act 1990 s 30(3)(a), (b) or (bb) (see PARA 620 note 8): Control of Pollution (Amendment) Act 1989 s 9(1A) (added by the Anti-social Behaviour Act 2003 s 5(1), (3)). For the purposes of any provision of the Control of Pollution (Amendment) Act 1989, 'authorised officer' in relation to any authority means an officer of the authority who is authorised in writing by the authority for the purposes of that provision: s 9(1B) (added by the Clean Neighbourhoods and Environment Act 2005 s 39(1)(3)).

2 As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

3 As to the meaning of 'controlled waste' see PARA 624; definition applied by the Control of Pollution (Amendment) Act 1989 s 9(1) (amended by the Environmental Protection Act 1990 Sch 15 para 31).

4 As to the meaning of 'transport' see PARA 709 note 4.

5 Control of Pollution (Amendment) Act 1989 s 5(1) (s 5 substituted, and s 5A added, by the Clean Neighbourhoods and Environment Act 2005 s 37). Certain functions under the Control of Pollution (Amendment) Act 1989 ss 5, 5A are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

As to the registration requirement referred to in the text see the Control of Pollution (Amendment) Act 1989 s 1(1); and PARA 709.

6 In acting under the Control of Pollution (Amendment) Act 1989 s 5(2) (see heads (1)-(4) in the text), an authorised officer or constable may: (1) stop any vehicle as referred to in head (2) in the text (but only a constable in uniform may stop a vehicle on any road); (2) enter any premises for the purpose specified in head (2) or head (4) in the text: s 5(5) (as substituted: see note 5). As to the meaning of 'road' see PARA 709 note 4.

Where an authorised officer or constable has stopped a vehicle under s 5(5), he may (in addition to any requirement that may be imposed under s 5(2)(a): see head (1) in the text) require any occupant of the vehicle to give him: (a) the occupant's name and address; (b) the name and address of the registered owner of the vehicle; (c) any other information he may reasonably request: s 5(9) (as so substituted).

7 Control of Pollution (Amendment) Act 1989 s 5(2)(a) (as substituted: see note 5). As to the use of fixed penalty notices for an offence under s 5(2)(a) see ss 5B, 5C; and PARA 713.

For the purposes of s 5(2)(a), a person's authority for transporting controlled waste is: (1) his certificate of registration as a carrier of controlled waste; (2) such copy of that certificate as satisfies requirements specified in regulations made by the appropriate person; or (3) such evidence as may be so specified that he is not required to be registered as a carrier of controlled waste: s 5(3) (as so substituted). In the Control of Pollution (Amendment) Act 1989, 'appropriate person' means the Secretary of State in relation to England (see PARA 58), and the Welsh Ministers in relation to Wales (see PARA 59): s 9(1) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 39(1), (2)). As to the power to make regulations see PARA 709 note 9. As to regulations made see the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991, SI 1991/1624 ; and see PARA 709 note 11.

Where an authorised officer or constable has required a person to produce an authority under the Control of Pollution (Amendment) Act 1989 s 5(2)(a), the person must do so: (a) by producing it forthwith to the authorised officer or constable; (b) by producing it at a place and within a period specified in regulations made by the appropriate person; or (c) by sending it to that place and within that period: s 5(4) (as so substituted).

8 'Vehicle' means any motor vehicle or trailer within the meaning of the Road Traffic Regulation Act 1984 (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 210): Control of Pollution (Amendment) Act 1989 s 9(1).

9 Control of Pollution (Amendment) Act 1989 s 5(2)(b) (as substituted: see note 5). See note 7.

10 Control of Pollution (Amendment) Act 1989 s 5(2)(c) (as substituted: see note 5). See note 7.

11 Control of Pollution (Amendment) Act 1989 s 5(2)(d) (as substituted: see note 5). See notes 5, 7.

A vehicle or its contents seized under s 5(2)(d): (1) by an authorised officer of a regulation authority, are seized on behalf of that authority; (2) by a constable in the presence of an authorised officer of a regulation authority, are seized on behalf of that authority; (3) by a constable without such an officer present, are seized on behalf of the waste collection authority in whose area the seizure takes place: s 5(6) (as so substituted).

12 A person guilty of an offence under the Control of Pollution (Amendment) Act 1989 s 5 is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 5(11) (as substituted: see note 5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

13 Control of Pollution (Amendment) Act 1989 s 5(7)(a) (as substituted: see note 5). A person is not guilty of an offence by virtue of s 5(7)(a) unless it is shown: (1) that the waste in question was controlled waste; and (2) that the waste was or was being transported to or from a place in Great Britain: s 5(8) (as so substituted). As to the use of fixed penalty notices for an offence under s 5(7)(a) see ss 5B, 5C; and PARA 713. As to the meaning of 'Great Britain' see PARA 1 note 2.

14 Control of Pollution (Amendment) Act 1989 s 5(7)(b) (as substituted: see note 5).

15 Control of Pollution (Amendment) Act 1989 s 5(7)(c) (as substituted: see note 5).

16 Control of Pollution (Amendment) Act 1989 s 5(10)(a) (as substituted: see note 5). As to this requirement see s 5(9); and note 6.

17 Control of Pollution (Amendment) Act 1989 s 5(10)(b) (as substituted: see note 5).

18 Ie under the Control of Pollution (Amendment) Act 1989 s 5: see the text and notes 1-17.

19 Control of Pollution (Amendment) Act 1989 s 5A(1) (as added: see note 5).

20 Control of Pollution (Amendment) Act 1989 s 5A(2) (as added: see note 5).

Regulations under s 5A(2) may in particular include provision as to: (1) the duties of a regulation authority in relation to the safe custody of seized property; (2) the circumstances in which the authority must return any such property to a person claiming entitlement to it; (3) the manner in which such persons, and the seized property to which they are entitled, may be determined; (4) the circumstances in which the authority may sell, destroy or otherwise dispose of seized property; (5) the uses to which the proceeds of any such sale may be put: s 5A(3) (as so added).

Regulations making provision under s 5A(3)(d) (see head (4) above): (a) must (subject to head (c) below) require the regulation authority to publish a notice in such form, and to take any other steps, as may be specified in the regulations for informing persons who may be entitled to the seized property that it has been seized and is available to be claimed; (b) must (subject to head (c) below) prohibit the authority from selling, destroying or otherwise disposing of any seized property unless a period specified in the regulations has expired without any obligation arising under the regulations for the authority to return the property to any person; (c) may allow for the requirements in heads (a) and (b) above to be dispensed with if the condition of the seized property requires its disposal without delay: s 5A(4) (as so added).

21 Control of Pollution (Amendment) Act 1989 s 5A(5) (as added: see note 5).

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713. Fixed penalty notices for use in relation to enforcement offences.

Where it appears to a regulation authority¹ that a person has failed without reasonable excuse to comply with a requirement to produce authority to transport waste², the regulation authority may give that person a notice³ offering him the opportunity of discharging any liability to conviction for an offence⁴ by payment of a fixed penalty⁵.

Where a person is given such a notice⁶ in respect of an offence: (1) no proceedings may be instituted for that offence before expiration of the period of 14 days following the date of the notice⁷; and (2) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period⁸.

Such a notice must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence⁹. The notice must also state: (a) the period during which¹⁰ proceedings will not be taken for the offence¹¹; (b) the amount of the fixed penalty¹²; and (c) the person to whom and the address at which the fixed penalty may be paid¹³.

Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in head (c) above at the address so mentioned¹⁴. The regulation authority to which a fixed penalty is payable¹⁵ may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority¹⁶.

In any proceedings a certificate which purports to be signed on behalf of the chief finance officer¹⁷ of the regulation authority, and states that payment of a fixed penalty was or was not received by a date specified in the certificate, is evidence of the facts stated¹⁸.

Fixed penalty receipts¹⁹, where received by the Environment Agency²⁰, must be paid to the Secretary of State²¹. Where received by a waste collection authority²², they must be used in accordance with the following provisions²³. A waste collection authority may use its fixed penalty receipts only for the purposes of: (i) its functions under the provision requiring the production of authority, vehicle search, tests and seizure authority²⁴ (including functions relating to the enforcement of offences under that provision)²⁵; (ii) such other of its functions as may be specified in regulations made by the appropriate person²⁶. A waste collection authority must supply the appropriate person with such information relating to its use of its fixed penalty receipts as the appropriate person may require²⁷.

The appropriate person may by regulations²⁸:

- 1708 (A) make provision for what a waste collection authority is to do with its fixed penalty receipts pending their being used for the purposes of functions of the authority referred to in heads (i) and (ii) above²⁹, if they are not so used before such time after their receipt as may be specified by the order³⁰;
- 1709 (B) make provision for accounting arrangements in respect of a waste collection authority's fixed penalty receipts³¹.

1 As to the meaning of 'regulation authority' see PARA 712 note 1.

2 Control of Pollution (Amendment) Act 1989 s 5B(1) (ss 5B, 5C added by the Clean Neighbourhoods and Environment Act 2005 s 38).

As to the requirement referred to in the text see the Control of Pollution (Amendment) Act 1989 s 5(2)(a); and PARA 712 head (1).

3 The form of a notice under the Control of Pollution (Amendment) Act 1989 s 5B must be such as the appropriate person may by order prescribe: s 5B(9) (as added: see note 2). As to the meaning of 'appropriate person' see PARA 712 note 7.

4 Is an offence under the Control of Pollution (Amendment) Act 1989 s 5(7)(a): see PARA 712 head (a).

5 Control of Pollution (Amendment) Act 1989 s 5B(2) (as added: see note 2).

The fixed penalty payable to a regulation authority under s 5B is, subject to s 5B(10), £300: s 5B(9) (as so added). The appropriate person may by order substitute a different amount for the amount for the time being specified in s 5B(9): s 5B(10) (as so added).

6 Is a notice under the Control of Pollution (Amendment) Act 1989 s 5B.

7 Control of Pollution (Amendment) Act 1989 s 5B(3)(a) (as added: see note 2).

8 Control of Pollution (Amendment) Act 1989 s 5B(3)(b) (as added: see note 2).

9 Control of Pollution (Amendment) Act 1989 s 5B(4) (as added: see note 2).

10 Is by virtue of the Control of Pollution (Amendment) Act 1989 s 5B(3).

11 Control of Pollution (Amendment) Act 1989 s 5B(5)(a) (as added: see note 2).

12 Control of Pollution (Amendment) Act 1989 s 5B(5)(b) (as added: see note 2).

13 Control of Pollution (Amendment) Act 1989 s 5B(5)(c) (as added: see note 2).

14 Control of Pollution (Amendment) Act 1989 s 5B(6) (as added: see note 2). Where a letter is sent in accordance with s 5B(6) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post: s 5B(7) (as so added).

15 Is payable under the Control of Pollution (Amendment) Act 1989 s 5B.

16 Control of Pollution (Amendment) Act 1989 s 5B(11) (as added: see note 2). The appropriate person may by regulations restrict the extent to which, and the circumstances in which, a regulation authority may make provision under s 5B(11): s 5B(12) (as so added). As to regulations under s 5B(12) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175. See also the Environmental Offences (Use of Fixed Penalty Receipts) (Wales) Regulations 2007, SI 2007/739 (amended by SI 2008/663); and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663.

17 For these purposes, 'chief finance officer', in relation to a regulation authority, means the person having responsibility for the financial affairs of the authority: Control of Pollution (Amendment) Act 1989 s 5B(14) (as added: see note 2).

18 Control of Pollution (Amendment) Act 1989 s 5B(13) (as added: see note 2).

19 Is amounts paid to a regulation authority in pursuance of notices under the Control of Pollution (Amendment) Act 1989 s 5B (see the text and notes 1-18): see s 5C(1) (as added: see note 2).

20 As to the Environment Agency see PARA 68 et seq.

21 Control of Pollution (Amendment) Act 1989 s 5C(2)(a) (as added: see note 2). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

22 As to the meaning of 'waste collection authority' see PARA 620 note 8.

23 Control of Pollution (Amendment) Act 1989 s 5C(2)(b) (as added: see note 2). The provisions referred to in the text are those of s 5C(3)-(9).

24 Is Control of Pollution (Amendment) Act 1989 s 5: see PARA 712.

25 Control of Pollution (Amendment) Act 1989 s 5C(3)(a) (as added: see note 2).

26 Control of Pollution (Amendment) Act 1989 s 5C(3)(b) (as added: see note 2). Regulations under s 5C(3)(b) may in particular have the effect that an authority may use its fixed penalty receipts for the purposes of any of its functions: s 5C(4) (as so added). As to the power to make regulations under the Control of Pollution (Amendment) Act 1989 see **PARA 709** note 9. As to regulations made under s 5C(3)(b), (4) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175.

27 Control of Pollution (Amendment) Act 1989 s 5C(5) (as added: see note 2).

28 Before making regulations under the Control of Pollution (Amendment) Act 1989 s 5C, the appropriate person must consult: (1) the authorities to which the regulations are to apply; (2) such other persons as the appropriate person thinks fit: s 5C(8) (as added: see note 2).

The powers to make regulations conferred by s 5C are, for the purposes of the Local Government Act 2003 s 100(1), to be regarded as included among the powers mentioned in s 100(2) (see **LOCAL GOVERNMENT** vol 69 (2009) **PARA 789**): Control of Pollution (Amendment) Act 1989 s 5C(9) (as so added).

29 Control of Pollution (Amendment) Act 1989 s 5C(6)(a)(i) (as added: see note 2).

30 Control of Pollution (Amendment) Act 1989 s 5C(6)(a)(ii) (as added: see note 2). The provision that may be made under s 5C(6)(a)(ii) includes, in particular, provision for the payment of sums to a person (including the appropriate person) other than the authority: s 5C(7) (as so added).

31 Control of Pollution (Amendment) Act 1989 s 5C(6)(b) (as added: see note 2).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(8) TRANSPORT OF WASTE/714. Seizure and disposal of vehicles used for illegal waste disposal.

714. Seizure and disposal of vehicles used for illegal waste disposal.

The following provisions apply until a day to be appointed¹. A justice of the peace may issue a warrant to a regulation authority² for the seizure of any vehicle³ if he is satisfied, on sworn information in writing:

- 1710 (1) that there are reasonable grounds for believing: (a) that an offence relating to the unauthorised deposit, treatment or disposal of waste⁴ has been committed⁵; and (b) that that vehicle was used in the commission of the offence⁶;
- 1711 (2) that proceedings for that offence have not yet been brought against any person⁷; and
- 1712 (3) that the authority has failed, after taking the prescribed⁸ steps, to ascertain the name and address of any person who is able to provide it with the prescribed information about who was using the vehicle at the time when the offence was committed⁹.

Where a warrant under these provisions has been issued to a regulation authority in respect of any vehicle, any duly authorised officer of the regulation authority or any constable¹⁰ may stop the vehicle and, on behalf of the authority, seize the vehicle and its contents¹¹. A warrant continues in force until its purpose is fulfilled¹². Any person seizing any property under these provisions must, if required to do so, produce both the warrant and any authority in pursuance of which he is acting under the warrant¹³.

Where any property has been seized under these provisions on behalf of a regulation authority, the authority may, in accordance with regulations made by the Secretary of State¹⁴, remove it to such place as the authority considers appropriate¹⁵ and may retain custody of it until either: (a) it is returned, in accordance with the regulations, to a person who establishes that he is entitled to it¹⁶; or (b) it is disposed of by the authority in exercise of a power conferred by the regulations to sell or destroy the property or to deposit it at any place¹⁷. Subject to its powers¹⁸ to sell or destroy any property or to dispose of it by depositing it at any place, it is the duty of a regulation authority, while any property is in its custody by virtue of a warrant under these provisions, to take such steps as are reasonably necessary for the safe custody of that property¹⁹.

Any person who intentionally obstructs any authorised officer of a regulation authority or constable in the exercise of any power conferred by virtue of a warrant under these provisions is guilty of an offence and liable, on summary conviction, to a penalty²⁰.

¹ The Control of Pollution (Amendment) Act 1989 s 6 is repealed by the Clean Neighbourhoods and Environment Act 2005 Sch 5 Pt 4 as from a day to be appointed under s 108. At the date at which this volume states the law no such day had been appointed.

² As to the meaning of 'regulation authority' see PARA 712 note 1.

³ As to the meaning of 'vehicle' see PARA 712 note 8.

⁴ ie an offence under the Control of Pollution Act 1974 s 3 (repealed) or the Environmental Protection Act 1990 s 33: see PARA 655. As to the meaning of 'waste' see PARA 623.

5 Control of Pollution (Amendment) Act 1989 s 6(1)(a)(i) (s 6(1) amended by the Environmental Protection Act 1990 Sch 15 para 31). See note 1.

6 Control of Pollution (Amendment) Act 1989 s 6(1)(a)(ii) (as amended: see note 5). See note 1.

7 Control of Pollution (Amendment) Act 1989 s 6(1)(b) (as amended: see note 5). See note 1.

8 'Prescribed' means prescribed by regulations: Control of Pollution (Amendment) Act 1989 s 9(1).

9 Control of Pollution (Amendment) Act 1989 s 6(1)(c) (as amended: see note 5). See note 1. As to the regulations made under s 6 see note 14.

10 As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

11 Control of Pollution (Amendment) Act 1989 s 6(2) (amended by the Environmental Protection Act 1990 Sch 15 para 31). See note 1. Nothing in the Control of Pollution (Amendment) Act 1989 s 6 authorises any person other than a constable in uniform to stop a vehicle on any road; and a duly authorised officer of a regulation authority is not entitled to seize any property under s 6 unless he is accompanied by a constable: s 6(3) (amended by the Environmental Protection Act 1990 Sch 15 para 31). As to the meaning of 'road' see PARA 709 note 4.

12 Control of Pollution (Amendment) Act 1989 s 6(4). See note 1.

13 Control of Pollution (Amendment) Act 1989 s 6(4). See note 1.

14 As to the power to make regulations under the Control of Pollution (Amendment) Act 1989 see PARA 709 note 9. As to the regulations made see the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991, SI 1991/1624; and PARA 709 note 11. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. See note 17.

15 Control of Pollution (Amendment) Act 1989 s 6(5) (s 6(5) amended by the Environmental Protection Act 1990 Sch 15 para 31). See note 1. See also note 17.

16 Control of Pollution (Amendment) Act 1989 s 6(5)(a) (as amended: see note 15). See note 1. See also note 17.

17 Control of Pollution (Amendment) Act 1989 s 6(5)(b) (as amended: see note 15). See note 1. Regulations under s 6 may not authorise a regulation authority to sell or destroy any property or to deposit any property at any place unless:

69 (1) the following conditions are satisfied, that is to say: (a) the authority has published such notice, and taken such other steps (if any), as may be prescribed for informing persons who may be entitled to the property that it has been seized and is available to be claimed; and (b) the prescribed period has expired without any obligation arising under the regulations for the regulation authority to return the property to any person (s 6(6)(a) (s 6(6) substituted by the Environment Act 1995 Sch 22 para 37)); or

70 (2) the condition of the property requires it to be disposed of without delay (Control of Pollution (Amendment) Act 1989 s 6(6)(b) (as so substituted)).

Regulations may:

71 (i) impose obligations on a regulation authority to return any property which has been seized under s 6 to a person who claims to be entitled to it and satisfies such requirements for establishing his entitlement, and such other requirements, as may be prescribed (s 6(7)(a) (amended by the Environmental Protection Act 1990 Sch 15 para 31));

72 (ii) provide for the manner in which the person entitled to any such property is to be determined where there is more than one claim to it (Control of Pollution (Amendment) Act 1989 s 6(7)(b));

73 (iii) provide for the proceeds of sale of any property sold by a regulation authority under the regulations to be applied towards meeting expenses incurred by the authority in exercising its functions by virtue of s 6 and, in so far as they are not so applied, to be applied in such other manner as may be prescribed (s 6(7)(c) (amended by the Environmental Protection Act 1990 Sch 15 para 31));

- 74 (iv) make provision which treats a person who establishes that he is entitled to a vehicle as having established for the purposes of regulations under the Control of Pollution (Amendment) Act 1989 s 6 that he is also entitled to its contents (s 6(7)(d)).

As to regulations made see note 14.

18 le by virtue of any regulations under the Control of Pollution (Amendment) Act 1989 s 6.

19 Control of Pollution (Amendment) Act 1989 s 6(8) (amended by the Environmental Protection Act 1990 Sch 15 para 31). See note 1.

20 Control of Pollution (Amendment) Act 1989 s 6(9) (amended by the Environmental Protection Act 1990 Sch 15 para 31). See note 1. The penalty is a fine not exceeding level 5 on the standard scale: see the Control of Pollution (Amendment) Act 1989 s 6(9) (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(8) TRANSPORT OF WASTE/715. Further enforcement provisions.

715. Further enforcement provisions.

The provisions of the Environmental Protection Act 1990 relating to the obtaining of information¹ have effect as if the provisions of the Control of Pollution (Amendment) Act 1989 were provisions of the Environmental Protection Act 1990².

A person is guilty of an offence³ if he: (1) fails, without reasonable excuse, to comply with any requirement in pursuance of regulations under the Control of Pollution (Amendment) Act 1989 to provide information to the Secretary of State⁴ or a regulation authority⁵; or (2) in complying with any such requirement, provides information which he knows to be false or misleading in a material particular or recklessly provides information which is false or misleading in a material particular⁶.

1 Ie the Environmental Protection Act 1990 s 71: see PARA 626.

2 Control of Pollution (Amendment) Act 1989 s 7(1) (amended by the Environmental Protection Act 1990 Sch 15 para 31; the Environment Act 1995 Sch 22 para 37; and the Anti-social Behaviour Act 2003 s 55(1), (2)). Certain functions under the Control of Pollution (Amendment) Act 1989 s 7 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

The provisions of the Environmental Protection Act 1990 s 71 apply as if references to a waste regulation authority were references to a regulation authority: Control of Pollution (Amendment) Act 1989 s 7(1) (as so amended). As to the meaning of 'regulation authority' see PARA 712 note 1.

3 A person guilty of an offence under the Control of Pollution (Amendment) Act 1989 s 7(3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 7(4). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Where the commission by any person of an offence under the Control of Pollution (Amendment) Act 1989 is due to the act or default of some other person, that other person is also guilty of the offence; and a person may be charged with and convicted of an offence by virtue of this provision whether or not proceedings for the offence are taken against any other person: s 7(5).

Where a body corporate is guilty of an offence under the Control of Pollution (Amendment) Act 1989 (including where it is so guilty by virtue of s 7(5)) in respect of any act or omission which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly: s 7(6). Where the affairs of a body corporate are managed by its members, s 7(6) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 7(7).

4 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

5 Control of Pollution (Amendment) Act 1989 s 7(3)(a) (amended by the Environmental Protection Act 1990 Sch 15 para 31).

6 Control of Pollution (Amendment) Act 1989 s 7(3)(b) (amended by the Environment Act 1995 Sch 19 para 3).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/10. WASTE MANAGEMENT/(8) TRANSPORT OF WASTE/716. Power to prohibit or restrict the importation or exportation of waste.

716. Power to prohibit or restrict the importation or exportation of waste.

The Secretary of State¹ may, for the purpose of preventing any risk of pollution of the environment² or of harm³ to human health arising from waste⁴ being imported or exported or of conserving the facilities or resources for dealing with waste, make regulations prohibiting or restricting, or providing for the prohibition or restriction of:

- 1713 (1) the importation into and the landing and unloading in the United Kingdom⁵;
or
- 1714 (2) the exportation, or the loading for exportation, from the United Kingdom⁶,

of waste of any description⁷. The regulations may make different provision for different descriptions of waste or waste of any description in different circumstances⁸. The regulations may, as respects any description of waste, confer or impose on waste regulation authorities⁹ or any of them such functions in relation to the importation of waste as appear to be appropriate to the Secretary of State, subject to such limitations and conditions as are specified in the regulations¹⁰.

The regulations may:

- 1715 (a) as respects functions conferred or imposed on waste regulation authorities, make them exercisable in relation to individual consignments or consignments in a series by the same person but not in relation to consignments or descriptions of consignments generally¹¹;
- 1716 (b) impose or provide for the imposition of prohibitions either absolutely or only if conditions or procedures prescribed in or under the regulations are not complied with¹²;
- 1717 (c) impose duties to be complied with before, on or after any importation or exportation of waste by persons who are, or are to be, consignors, consignees, carriers or holders of the waste or any waste derived from it¹³;
- 1718 (d) confer certain powers¹⁴;
- 1719 (e) provide for appeals to the Secretary of State from determinations made by authorities under the regulations¹⁵;
- 1720 (f) provide for the keeping by the Secretary of State, waste regulation authorities and waste collection authorities¹⁶ of public registers of information relating to the importation and exportation of waste and for the transmission of such information between any of those persons¹⁷;
- 1721 (g) create offences¹⁸.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 For the purposes of the Environmental Protection Act 1990 s 141, the 'environment' means land, water and air or any of them: s 141(6).

3 For the purposes of the Environmental Protection Act 1990 s 141, 'harm' includes offence to any of man's senses: s 141(6).

- 4 As to the meaning of 'waste' see PARA 623; definition applied by the Environmental Protection Act 1990 s 141(6).
- 5 Environmental Protection Act 1990 s 141(1)(a). For the purposes of s 141, the 'United Kingdom' includes its territorial sea: s 141(6). As to the meaning of 'United Kingdom' generally see PARA 1 note 2.
- 6 Environmental Protection Act 1990 s 141(1)(b).
- 7 Environmental Protection Act 1990 s 141(1). At the date at which this volume states the law no such regulations had been made.
- 8 Environmental Protection Act 1990 s 141(2).
- 9 As to the meaning of 'waste regulation authority' see PARA 620 note 6; definition applied by the Environmental Protection Act 1990 s 141(6). In the application of s 141 to Northern Ireland and the territorial sea of the United Kingdom adjacent to Northern Ireland, 'waste regulation authority' means the Department of the Environment for Northern Ireland: s 141(7) (amended by SI 1997/2778).
- 10 Environmental Protection Act 1990 s 141(3). The regulations may confer or impose on waste regulation authorities or any of them functions of enforcing any of the regulations on behalf of the Secretary of State whether or not the functions fall within s 141(3): s 141(4).
- 11 Environmental Protection Act 1990 s 141(5)(a) (amended by the Environment Act 1995 Sch 22 para 90, Sch 24).
- 12 Environmental Protection Act 1990 s 141(5)(b).
- 13 Environmental Protection Act 1990 s 141(5)(c).
- 14 Environmental Protection Act 1990 s 141(5)(d). The powers referred to in the text are powers corresponding to those conferred by s 69(3) (repealed) (powers of entry of inspectors).
- 15 Environmental Protection Act 1990 s 141(5)(e).
- 16 As to the meaning of 'waste collection authority' see PARA 620 note 8; definition applied by the Environmental Protection Act 1990 s 141(6).
- 17 Environmental Protection Act 1990 s 141(5)(f).
- 18 Environmental Protection Act 1990 s 141(5)(g). This power is subject to the limitation that no offence is to be punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than six months or a fine exceeding level 5 on the standard scale (if not calculated on a daily basis) or, in the case of a continuing offence, exceeding one-tenth of the level on the standard scale specified as the maximum penalty for the original offence: see s 141(5)(g). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

As from a day to be appointed, s 141(5)(g) is amended so as to refer to the prescribed term instead of six months: see s 141(5)(g), (5A) (s 141(5)(g) prospectively amended, and s 141(5A) prospectively added, by the Criminal Justice Act 2003 Sch 27 para 6). In the Environmental Protection Act 1990 s 141(5)(g), 'prescribed term' means (1) in relation to England and Wales, where the offence is a summary offence, 51 weeks; (2) in relation to England and Wales, where the offence is triable either way, 12 months: see s 141(5A) (as so prospectively added). At the date at which this volume states the law no such day had been appointed.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/11. LITTER AND GRAFFITI/(1) PROVISIONS RELATING TO LITTER/717. Grants for publicity discouraging litter.

11. LITTER AND GRAFFITI

(1) PROVISIONS RELATING TO LITTER

717. Grants for publicity discouraging litter.

The Secretary of State¹ may with the consent of the Treasury² make grants to any body for the purpose of assisting the body to encourage the public not to deface places by litter³.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

3 Litter Act 1983 s 3. Section 3 has effect in its application to the Isles of Scilly with such modifications, additions, omissions and amendments as the Secretary of State may by order specify: s 11. At the date at which this volume states the law no such order had been made. As to the making of orders under the Litter Act 1983 see PARA 718 note 7. The Litter Act 1983 does not extend to Northern Ireland: see s 13.

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718. Consultations and proposals for abatement of litter.

As from a day to be appointed¹, it is the duty of the council of each non-metropolitan county and the other litter authorities² whose areas are included in the county to consult from time to time together, and with such voluntary bodies as they consider appropriate and as agree to participate in the consultations, about the steps which the county council, each of the other litter authorities and each of the bodies are to take for the purpose of abating litter in the county³. It is the duty of the county council: (1) to prepare and from time to time revise a statement of the steps which the council, each of the other litter authorities and each of the bodies agree to take for that purpose⁴; (2) to take such steps as in its opinion will give adequate publicity in the county to the statement⁵; and (3) to keep a copy of the statement available at its principal office for inspection by the public free of charge at all reasonable hours⁶.

The Secretary of State may by order⁷ repeal or amend any provision of any local Act⁸ passed before 31 July 1974⁹, or any order or other instrument made under an Act so passed¹⁰, if it appears to him that the provision is inconsistent with, or has become unnecessary or requires alteration in consequence of, these provisions¹¹.

1 The Litter Act 1983 s 4 is to come into force on such day as the Secretary of State may by order appoint: s 13(2). Different days may be appointed for different purposes: s 13(2). At the date at which this volume states the law no such day had been appointed.

Similar provision is made by the Control of Pollution Act 1974 s 24(1)-(3). At the date at which this volume states the law no day had been appointed under s 109(2) for the commencement of these provisions, and they are prospectively repealed by the Litter Act 1983 Sch 2. So far as they repeal the Control of Pollution Act 1974 s 24(1)-(3), the provisions of the Litter Act 1983 s 12(3), Sch 2 are to come into force on such day as the Secretary of State may by order appoint: s 13(2). Different days may be appointed for different purposes: s 13(2). At the date at which this volume states the law no such day had been appointed.

Once in force, s 4 is to have effect in its application to the Isles of Scilly with such modifications, additions, omissions and amendments as the Secretary of State may by order specify: s 11.

As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the making of orders under the Litter Act 1983 see note 7.

2 For the purposes of the Litter Act 1983 s 4(1), 'litter authority' includes a parish meeting but not a joint body: s 4(3). 'Joint body' means a joint body constituted solely of two or more such councils as are mentioned in heads (1)-(6) below: s 10(1) (s 10(1) renumbered by the Local Government (Wales) Act 1994 Sch 9 para 12). The Litter Act s 4 is to have effect as if a national park authority were a litter authority, as if the relevant park were the authority's area, and as if the reference to the authority's area were a reference to any part of the relevant park: Environment Act 1995 s 70, Sch 9 para 12. As to national parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

For the purposes of the Litter Act 1983 generally, 'litter authority', in relation to England and Wales, means, except so far as is otherwise provided: (1) a county council; (2) a district council; (3) a London borough council; (4) the Common Council of the City of London; (5) a parish council; (6) a community council; (7) a joint body; (8) the Sub-Treasurer of the Inner Temple; or (9) the Under-Treasurer of the Middle Temple: s 10(1) (as so renumbered; definition amended by the Environment Act 1995 Sch 24). In the application of the Litter Act 1983 in relation to Wales, any reference to a county is to be read as including a reference to a county borough and any reference to a county council is to be read as including a reference to a county borough council: s 10(2) (s 10(2) added by the Local Government (Wales) Act 1994 Sch 9 para 12).

3 Litter Act 1983 s 4(1) (amended by the Local Government Act 1985 Sch 6 para 5; and the Environment Act 1995 Sch 24). As to the application of the Litter Act 1983 s 4(1) to a metropolitan county, and to Greater London, see s 4(2) (substituted by the Local Government Act 1985 Sch 6 para 5).

4 Litter Act 1983 s 4(1)(i) (amended by the Environment Act 1995 Sch 24). See also note 3.

5 Litter Act 1983 s 4(1)(ii). See also note 3.

6 Litter Act 1983 s 4(1)(iii). See also note 3.

7 An order under the Litter Act 1983 is to be made by statutory instrument: s 9(1). Any such statutory instrument, other than one made under s 13(2) (see note 1), is to be subject to annulment in pursuance of a resolution of either House of Parliament: s 9(2). An order under the Litter Act 1983, other than one made under s 13(2) (see note 1), may contain such transitional, supplemental or incidental provisions as appear to the Secretary of State to be appropriate: s 9(5). An order under s 4 may make different provision for different circumstances: s 9(3).

8 This includes an Act confirming a provisional order: see the Litter Act 1983 s 4(5)(a).

9 Litter Act 1983 s 4(5)(a). The date mentioned in the text is the date on which the Control of Pollution Act 1974 was passed.

10 Litter Act 1983 s 4(5)(b).

11 Litter Act 1983 s 4(5).

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719. Litter bins.

A litter authority¹ in England and Wales may provide and may maintain in any street or public place receptacles for refuse or litter ('litter bins')². It is the duty of a litter authority in England and Wales to make arrangements for the regular emptying and cleansing of any litter bins provided or maintained by it³; and such an authority has power to cleanse and empty litter bins provided in any street or public place⁴. This regular emptying of litter bins must be sufficiently frequent to ensure that no such litter bin or its contents becomes a nuisance or gives reasonable ground for complaint⁵. In any place where a litter bin is provided or maintained⁶, a litter authority may put up notices about the leaving of refuse and litter, and for that purpose may erect and maintain notice boards⁷. Any person who wilfully removes or otherwise interferes with any litter bin or notice board⁸ is liable on summary conviction to a penalty⁹.

The powers conferred by these provisions are only exercisable with the consent of certain persons¹⁰. A litter authority may not, under these provisions, do anything that is unlawful under the law relating to ancient monuments or to town and country planning¹¹.

1 For the purposes of the Litter Act 1983 s 5, 'litter authority' includes the Council of the Isles of Scilly but not a joint body: s 6(8) (amended by the Environment Act 1995 Sch 24). As to the meaning of 'joint body' see PARA 718 note 2. As to the meaning of 'litter authority' generally see PARA 718 note 2.

A county council and a metropolitan district council may if they think fit make a contribution to any expenditure incurred by a parish council or a community council under the Litter Act 1983 s 5: s 6(1) (amended by the Local Government Act 1985 Sch 6 para 5). A parish council or community council may contribute towards the reasonable expenses incurred by any person in doing anything which the council has power to do under the Litter Act 1983 s 5, and the expenses incurred by any other parish council or community council in exercising its powers under s 5: s 6(2). Two or more parish councils or community councils may by agreement combine for the purposes of exercising their powers under s 5: s 6(3).

2 Litter Act 1983 s 5(1). The provisions of s 5 apply to a receptacle provided under the Public Health Act 1936 s 76 (repealed) or the Public Health Act 1961 s 51 (repealed) as if it had been provided under the Litter Act 1983 s 5: s 5(11).

The Secretary of State may by order repeal or amend any provision in any local Act passed before 3 August 1961 (ie the date on which the Public Health Act 1961 was passed), in any Act passed before that date and confirming a provisional order, or in any order or other instrument made under an Act before that date, where it appears to him that that provision is inconsistent with, or has become unnecessary in consequence of, the Litter Act 1983 s 5 or s 6: s 6(4). However, the Secretary of State may not make such an order repealing or amending a provision in a local Act the Bill for which was promoted by: (1) a county council, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under-Treasurer of the Middle Temple or the Council of the Isles of Scilly; or (2) any authority, board, commissioners, trustees or other body whose functions under the local Act have become exercisable by such a council, Sub-Treasurer or Under-Treasurer, except on the application of that council, Sub-Treasurer or Under-Treasurer: s 6(5). Before making an order under s 6, the Secretary of State must consult with any of the authorities mentioned in head (1) above who appear to him to be concerned, not being an authority on whose application the order is made: s 9(4). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

Where a resolution under the Local Government Act 1972 s 147(3) (repealed), or an order under the Local Government Act 1933 s 190(3) (repealed) that by virtue of the Local Government Act 1972 s 147(6) (repealed) continues to have effect as if it were such a resolution, contains or has effect as if it included a reference to the Public Health Act 1961 s 51 (repealed), that reference has effect as if it were a reference to s 51 (repealed) or the Litter Act 1983 s 5: s 6(6). See also **LOCAL GOVERNMENT** vol 69 (2009) PARA 613.

Certain provisions of the Public Health Act 1936 apply in relation to the Litter Act 1983 ss 5, 6, Sch 1 as if those provisions of the Litter Act 1983 were contained in the Public Health Act 1936: Litter Act 1983 s 6(7). The

provisions of the Public Health Act 1936 referred to are: ss 283-285 (see PARAS 119-120); s 288 (see PARA 115); s 304 (see PARA 128); s 305 (see PARA 105); s 341 (see PARA 108); s 343: see the Litter Act 1983 s 6(7).

3 le under the Litter Act 1983 s 5 or the Highways Act 1980 s 185 (which provides a similar power to install refuse or litter bins in streets) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 568).

4 Litter Act 1983 s 5(2). This power may be exercised by the authority or any other person: s 5(2). A litter authority may sell refuse or litter removed by it from any litter bins: s 5(7).

5 Litter Act 1983 s 5(3).

6 See note 3.

7 Litter Act 1983 s 5(4).

8 le any litter bin or notice board provided or erected under the Litter Act 1983 s 5 or the Highways Act 1980 s 185 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 568).

9 Litter Act 1983 s 5(9). The penalty is a fine not exceeding level 1 on the standard scale: s 5(9). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

The court by which a person is convicted under s 5(9) may order him to pay a sum not exceeding £20 as compensation to the litter authority concerned, and any such order is enforceable in the same way as an order for costs to be paid by the offender: s 5(10).

10 See the Litter Act 1983 s 5(6), Sch 1 para 1. The persons whose consent is required are: (1) in a street which is a highway for which the litter authority is not the highway authority, the highway authority for the street; (2) in a street belonging to and repairable by any railway, dock, harbour, canal, inland navigation or passenger road transport undertakers and forming the approach to a station, dock, wharf or depot of those undertakers, the undertakers; (3) on a bridge not vested in the litter authority or on the approaches to such a bridge, the authority or other person in whom the bridge is vested; (4) on a bridge carrying a street over a railway, canal or inland navigation, or on the approaches to such a bridge, or under a bridge carrying a railway, canal or inland navigation over a street, the railway, canal or inland navigation undertakers concerned; (5) in a position obstructing or interfering with any existing access to land or premises abutting upon a street, the owner and the occupier of the land or premises: Sch 1 para 1, Table. A consent required by these provisions must not be unreasonably withheld but may be given subject to any reasonable conditions, including a condition that the authority must remove a litter bin or notice board either at any time or after the expiration of a period if reasonably required to do so by the person giving the consent: Sch 1 para 2. Where the consent of the Secretary of State is required under these provisions, any dispute between him and the authority as to whether the consent is unreasonably withheld or is given subject to reasonable conditions, or whether the removal of anything to the provision of which the consent relates in accordance with any condition of the consent is reasonably required, must be referred to and determined by an arbitrator to be appointed in default of agreement by the President of the Institution of Civil Engineers: Sch 1 para 3. As to the Institution of Civil Engineers see **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARAS 220-221.

Subject to the City of London (Various Powers) Act 1971 s 13 (amended by the Litter Act 1983 Sch 2), which provides for a power to affix receptacles for refuse or litter to external walls of buildings fronting any street, a litter authority does not have power under the Litter Act 1983 s 5 to place any litter bin or any notice board: (a) on any land forming part of an open space as defined in the Open Spaces Act 1906 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 504) which is provided by or under the management and control of some other litter authority or a parish meeting, without the consent of that authority or meeting; or (b) on any other land not forming part of a street, without the consent of the owner and of the occupier of that land: s 5(5).

11 Litter Act 1983 s 5(8). As to the law relating to ancient monuments see **NATIONAL CULTURAL HERITAGE**; and as to the law relating to town and country planning see **TOWN AND COUNTRY PLANNING**.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/11. LITTER AND GRAFFITI/(1) PROVISIONS RELATING TO LITTER/720. Fouling of land by dogs.

720. Fouling of land by dogs.

The Clean Neighbourhoods and Environment Act 2005 contains provisions relating to the control of dogs, which are dealt with elsewhere in this work¹.

¹ See the Clean Neighbourhoods and Environment Act 2005 Pt 6 (ss 55-68); and **ANIMALS** vol 2 (2008) PARAS 907-908.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/11. LITTER AND GRAFFITI/(1) PROVISIONS RELATING TO LITTER/721. Offence of leaving litter.

721. Offence of leaving litter.

A person is guilty of an offence if he throws down, drops or otherwise deposits any litter¹ in any specified place² and leaves it³. No offence is committed⁴ where the depositing of the litter is: (1) authorised by law⁵; or (2) done by or with the consent of the owner, occupier or other person having control of the place where it is deposited⁶. A person may only give consent under head (2) above in relation to the depositing of litter in a lake or pond⁷ or watercourse⁸ if he is the owner, occupier or other person having control of: (a) all the land adjoining that lake or pond or watercourse⁹; and (b) all the land through or into which water in that lake or pond or watercourse directly or indirectly discharges, otherwise than by means of a public sewer¹⁰.

1 'Litter' includes the discarded ends of cigarettes, cigars and like products, and discarded chewing-gum and the discarded remains of other products designed for chewing: Environmental Protection Act 1990 s 98(5A) (added by the Clean Neighbourhoods and Environment Act 2005 s 27). See *Westminster City Council v Riding* [1996] Env LR 95 ('litter' given its natural meaning of miscellaneous rubbish left lying about but no clear dichotomy between 'waste' under the Environmental Protection Act 1990 Pt II (ss 29-78) (see PARA 623) and Pt IV (ss 86-99)).

The Secretary of State may, by order, apply the provisions of Pt IV which apply to refuse to any description of animal droppings in all or any prescribed circumstances subject to such modifications as appear to him to be necessary: s 86(1), (14). As to the order that has been made see the Litter (Animal Droppings) Order 1991, SI 1991/961.

Any power under the Environmental Protection Act 1990 s 86 may be exercised differently as respects different areas, different descriptions of land or for different circumstances: s 86(1), (15).

As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 In any place in the area of a principal litter authority which is open to the air (except a place which is 'open to the air' for the purposes of the Environmental Protection Act 1990 Pt IV, by virtue of s 86(13), if the public does not have access to it, with or without payment): s 87(2), (3) (s 87(1)-(4) substituted by the Clean Neighbourhoods and Environment Act 2005 s 18). The Environmental Protection Act 1990 s 86(13) provides that a place on land is to be treated as 'open to the air' notwithstanding that it is covered if it is open to the air on at least one side: see s 86(13). See *Felix v DPP* [1998] Crim LR 657, [1998] All ER (D) 146 (telephone box not a 'public open space' as it was not 'open to the air on one side').

It is immaterial for the purposes of the Environmental Protection Act 1990 s 87 whether the litter is deposited on land or in water: s 87(4) (as so substituted).

3 Environmental Protection Act 1990 s 87(1) (as substituted: see note 2). Certain functions under s 87 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

A person who is guilty of an offence under the Environmental Protection Act 1990 s 87 is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 87(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. A local authority, with a view to promoting the abatement of litter, may take such steps as the authority thinks appropriate for making the effect of s 87(5) known to the public in its area: s 87(6). See *Westminster City Council v Riding* [1996] Env LR 95 (necessary element of the offence to prove when litter deposited).

As to graffiti and fly-posting see the Anti-social Behaviour Act 2003 ss 43-52; and PARAS 735-736. See also the London Local Authorities Act 2007 s 31(1), Sch 2 Pt 1 (modification of enactments in enforcement action zone).

4 In the under the Environmental Protection Act 1990 s 87(1).

5 Environmental Protection Act 1990 s 87(4A)(a) (s 87(4A)-(4C) added by the Clean Neighbourhoods and Environment Act 2005 s 18).

6 Environmental Protection Act 1990 s 87(4A)(b) (as added: see note 5).

7 As to the meanings of 'lake or pond', 'watercourse' and 'public sewer' see PARA 289; definitions applied by virtue of the Environmental Protection Act 1990 s 87(4C) (as added: see note 5).

8 See note 7.

9 Environmental Protection Act 1990 s 87(4B)(a) (as added: see note 5).

10 Environmental Protection Act 1990 s 87(4B)(b) (as added: see note 5). See note 7.

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722. Fixed penalty notices for leaving litter.

Where on any occasion an authorised officer¹ of a litter authority² finds a person who he has reason to believe has on that occasion committed an offence³ in the area of that authority, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty⁴. Where a person is given such a notice in respect of an offence:

- 1722 (1) no proceedings may be instituted for that offence before the expiration of 14 days following the date of the notice⁵; and
- 1723 (2) he may not be convicted of that offence if he pays the fixed penalty before the expiration of that period⁶.

A notice under these provisions must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and must state⁷:

- 1724 (a) the period during which proceedings will not be taken⁸ for the offence⁹;
- 1725 (b) the amount of the fixed penalty¹⁰; and
- 1726 (c) the person to whom and the address at which the fixed penalty may be paid¹¹.

Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise)¹².

In any proceedings a certificate which purports to be signed by or on behalf of the chief finance officer¹³ of the litter authority¹⁴, and states that payment of a fixed penalty was or was not received by a date specified in the certificate¹⁵, is evidence of the facts stated¹⁶.

If an authorised officer of a litter authority proposes to give a person a notice under the above provisions¹⁷, the officer may require the person to give him his name and address¹⁸. A person commits an offence if: (i) he fails to give his name and address when required to do so¹⁹; or (ii) he gives a false or inaccurate name or address in response to such a requirement²⁰.

1 For these purposes, 'authorised officer', in relation to a litter authority (see note 2), means: (1) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under the Environmental Protection Act 1990 s 88; (2) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function; and (3) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices: s 88(10) (definition substituted by the Clean Neighbourhoods and Environment Act 2005 s 19(1), (5)).

2 For these purposes, the following are 'litter authorities': (1) any principal litter authority, other than an English county council or a joint board; (2) any English county council or joint board designated by the Secretary of State, by order, in relation to such area as is specified in the order (not being an area in a national park); (3) the Broads Authority; (4) a parish or community council: Environmental Protection Act 1990 s 88(9) (amended by the Local Government (Wales) Act 1994 Sch 9 para 17(8); the Environment Act 1995 Sch 24; and the Clean Neighbourhoods and Environment Act 2005 s 19(1), (4)).

At the date at which this volume states the law no order had been made under the Environmental Protection Act 1990 s 88(9). Section 88 is to have effect as if a national park authority were a litter authority and as if the relevant park were the authority's area: see the Environment Act 1995 s 70, Sch 9 para 12. In England and Wales the following are 'principal litter authorities': (a) a county council; (b) a county borough council; (c) a district council; (d) a London borough council; (e) the Common Council of the City of London; and (f) the Council of the Isles of Scilly, but the Secretary of State may, by order, designate other descriptions of local authorities as litter authorities for the purposes of the Environmental Protection Act 1990 Pt IV (ss 86-99), and any such authority is also a principal litter authority: s 86(1), (2) (amended by the Local Government (Wales) Act 1994 Sch 9 para 17(6)). At the date at which this volume states the law no order had been made under the Environmental Protection Act 1990 s 86(2). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to local authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to national parks and the national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) (Reissue) PARA 636 et seq. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734.

The appropriate person may by regulations prescribe conditions to be satisfied by a person before a parish or community council may authorise him in writing for the purpose of giving notices under s 88: s 88(11) (added by the Clean Neighbourhoods and Environment Act 2005 s 19(1), (6)). See note 1. 'Appropriate person' means, in relation to England, the Secretary of State and, in relation to Wales, the Welsh Ministers: Environmental Protection Act 1990 s 98(1A) (added by the Clean Neighbourhoods and Environment Act 2005 s 26). In exercise of the power in the Environmental Protection Act 1990 s 88(11) the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175, were made. See also the Environmental Offences (Use of Fixed Penalty Receipts) (Wales) Regulations 2007, SI 2007/739 (amended by SI 2008/663); and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663.

3 le under the Environmental Protection Act 1990 s 87: see PARA 721.

4 Environmental Protection Act 1990 s 88(1). The fixed penalty payable in pursuance of a notice under s 88 is payable to the litter authority (see note 2) whose authorised officer gave the notice: s 88(6) (s 88(6), (7) substituted, and s 88(6A), (6B) added, by the Clean Neighbourhoods and Environment Act 2005 s 19(1), (2)). The amount of a fixed penalty payable in pursuance of a notice under the Environmental Protection Act 1990 s 88: (1) is the amount specified by a principal litter authority in relation to its area (whether the penalty is payable to that or another authority); or (2) if no amount is so specified, is £75: s 88(6A) (as so added). The reference in s 88(6A) to a principal litter authority does not include an English county council for an area for which there is also a district council: s 88(6B) (as so added). The litter authority to which a fixed penalty is payable under s 88 may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority: s 88(7) (as so substituted). The Secretary of State may, when making an order under s 88(7) substitute different penalties as regards enforcement action zones designated under the London Local Authorities Act 2007 s 29 (enforcement action zones) (see **LONDON GOVERNMENT**): see the Environmental Protection Act 1990 s 88(7A) (added by London Local Authorities Act 2007 Sch 2 Pt 2). The amount of a fixed penalty capable of being specified by a principal litter authority in Wales under the Environmental Protection Act 1990 Act s 88 must not be less than £75 and not more than £150: Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663, reg 2(1)(a). See note 1. See also PARA 720. As to fixed penalties generally see the Environmental Protection Act 1990 s 97A; and PARA 733.

Certain functions under the Environmental Protection Act 1990 s 88 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

As to graffiti and fly-posting see the Anti-social Behaviour Act 2003 ss 43-52; and PARAS 735-736.

5 Environmental Protection Act 1990 s 88(2)(a).

6 Environmental Protection Act 1990 s 88(2)(b).

7 The form of notices under these provisions must be such as the Secretary of State may by order prescribe: Environmental Protection Act 1990 s 88(5). See the Dog Fouling (Fixed Penalty) (England) Order 2002, SI 2002/425; and the Litter (Fixed Penalty Notices) Order 1991 and the Dog Fouling (Fixed Penalties) Order 1996 (Revocation) (England) Order 2005, SI 2005/3223.

8 le by virtue of the Environmental Protection Act 1990 s 88(2): see heads (1), (2) in the text.

9 Environmental Protection Act 1990 s 88(3)(a).

10 Environmental Protection Act 1990 s 88(3)(b). See note 4.

11 Environmental Protection Act 1990 s 88(3)(c).

12 Environmental Protection Act 1990 s 88(3). Where a letter is sent in accordance with s 88(3), payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post: s 88(4).

13 For these purposes, 'chief finance officer', in relation to a litter authority, means the person having responsibility for the financial affairs of the authority: Environmental Protection Act 1990 s 88(10).

14 Environmental Protection Act 1990 s 88(8)(a).

15 Environmental Protection Act 1990 s 88(8)(b).

16 Environmental Protection Act 1990 s 88(8).

17 Ie under the Environmental Protection Act 1990 s 88.

18 Environmental Protection Act 1990 s 88(8A) (s 88(8A)-(8C) added by the Clean Neighbourhoods and Environment Act 2005 s 19(1), (3)). See note 1.

19 Environmental Protection Act 1990 s 88(8B)(a) (as added: see note 18). A person guilty of an offence under s 88(8B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 88(8C) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

20 Environmental Protection Act 1990 s 88(8B)(b) (as added: see note 18). See note 19.

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723. Duty to keep land and highways clear of litter etc.

It is the duty of:

- 1727 (1) each local authority, as respects any relevant highway¹ for which it is responsible²;
- 1728 (2) the Secretary of State, as respects any trunk road³ which is a special road⁴ and any relevant highway for which he is responsible⁵;
- 1729 (3) each principal litter authority⁶, as respects its relevant land⁷;
- 1730 (4) the appropriate Crown authority⁸, as respects its relevant Crown land⁹;
- 1731 (5) each designated statutory undertaker¹⁰, as respects its relevant land¹¹; and
- 1732 (6) the governing body of each designated educational institution¹², as respects its relevant land¹³,

to ensure that the land is, so far as is practicable, kept clear of litter and refuse¹⁴.

It is also the duty of:

- 1733 (a) each local authority, as respects any relevant highway for which it is responsible¹⁵;
- 1734 (b) the Secretary of State, as respects any trunk road which is a special road and any relevant highway for which he is responsible¹⁶,

to ensure that the highway is, so far as is practicable, kept clean¹⁷.

In determining what standard is required, as respects any description of land or highway, for compliance with the above provisions¹⁸, regard must be had to the character and use of the land or highway as well as the measures which are practicable in the circumstances¹⁹.

The Secretary of State must prepare and issue a code of practice for the purpose of providing practical guidance on the discharge of the duties imposed by the above provisions²⁰, and any person subject to any such duty must have regard to the code of practice in force in discharging that duty²¹.

1 Every highway maintainable at the public expense other than a trunk road which is a special road is a 'relevant highway' and the local authority which is, for the purposes of the Environmental Protection Act 1990 Pt IV (ss 86-99), 'responsible' for so much of it as lies within its area is, subject to any order under s 86(11) (see note 2): (1) in Greater London, the council of the London borough or the Common Council of the City of London; (2) in England outside Greater London, the council of the district; (3) in Wales, the council of the county or county borough; and (4) the Council of the Isles of Scilly: s 86(1), (9) (amended by the Local Government (Wales) Act 1994 Sch 9 para 17(7)). 'Highway', 'highway maintainable at the public expense', 'special road' and 'trunk road', in relation to England and Wales, have the same meanings as in the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 11); Environmental Protection Act 1990 s 98(1), (5). As to litter on highways see also **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 382 et seq.

2 Environmental Protection Act 1990 s 89(1)(a). See also note 14. As to the local authority which is 'responsible' see note 1.

It is the duty of a local authority, when discharging its duty under s 89(1)(a) or s 89(2) (see the text and notes 15-17) as respects any relevant highway, to place and maintain on the highway such traffic signs and barriers

as may be necessary for giving warning and preventing danger to traffic or for regulating it and afterwards to remove them as soon as they cease to be necessary for those purposes; but this provision has effect subject to any directions given under s 89(6): s 89(5). For these purposes, 'traffic sign' has the meaning given in the Road Traffic Regulation Act 1984 s 64(1) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 830): Environmental Protection Act 1990 s 89(14). In discharging its duty under s 89(1)(a) or s 89(2) (see the text and notes 15-17) to keep clear of litter and refuse or to clean any relevant highway for which it is responsible, the local authority must comply with any directions given to it by the highway authority with respect to: (1) the placing and maintenance of any traffic signs or barriers; (2) the days or periods during which clearing or cleaning may not be undertaken or undertaken to any extent specified in the direction; and for the purpose of enabling it to discharge its duty under s 89(1)(a) or s 89(2) as respects any relevant highway the local authority may apply to the highway authority for that authority to exercise its powers under the Road Traffic Regulation Act 1984 s 14(1) or s 14(2) (temporary prohibition or restriction of traffic) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 755): Environmental Protection Act 1990 s 89(6) (amended by the Road Traffic (Temporary Restrictions) Act 1991 s 2(6)). As to the highway authority see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 236.

Matter of any description prescribed by regulations made by the Secretary of State for the purposes of the Environmental Protection Act 1990 s 89(1)(a) and s 89(2) (see the text and notes 15-17) is litter or refuse to which the duties imposed by those provisions apply as respects relevant highways whether or not it would be litter or refuse apart from this provision: s 89(4). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

The Secretary of State may by order, as respects relevant highways, relevant highways of any class or any part of a relevant highway specified in the order, transfer the responsibility for the discharge of the duties imposed by s 89 from the local authority to the highway authority: s 86(1), (11). He must not, however, make an order under this provision unless: (a) (except where he is the highway authority) he is requested to do so by the highway authority; (b) he consults the local authority; and (c) it appears to him to be necessary or expedient to do so in order to prevent or minimise interference with the passage or with the safety of traffic along the highway in question: s 86(1), (11). Where, by an order under this provision, responsibility for the discharge of those duties is transferred, the authority to which the transfer is made is, for the purposes of Pt IV, 'responsible' for the highway or part specified in the order: s 86(1), (11). As to the exercise of any power under s 86 see PARA 721 note 1. As to the orders made see eg the Highway Litter Clearance and Cleaning (Transfer of Duties) Order 1991, SI 1991/337; the Highway Litter Clearance and Cleaning (Transfer of Responsibility) Order 1997, SI 1997/2960; the Highway Litter Clearance and Cleaning (Transfer of Responsibility) Order 1998, SI 1998/467; the Highway Litter Clearance and Cleaning (Transfer of Responsibility) (A13 Trunk Road) Order 2000, SI 2000/1508; and the Highway Litter Clearance and Cleaning (Transfer of Responsibility) (England) Order 2009, SI 2009/2677.

3 As to the meaning of 'trunk road' see note 1.

4 As to the meaning of 'special road' see note 1.

5 Environmental Protection Act 1990 s 89(1)(b).

6 As to principal litter authorities see PARA 722 note 2.

7 Environmental Protection Act 1990 s 89(1)(c).

Subject to s 86(8), land is 'relevant land' of a principal litter authority if, not being relevant land falling within s 86(7) (see note 12), it is open to the air and is land (but not a highway) which is under the direct control of such an authority to which the public is entitled or permitted to have access with or without payment: s 86(1), (4).

The Secretary of State may by order designate descriptions of land which are not to be treated as relevant Crown land (see note 9) or as relevant land of principal litter authorities, designated statutory undertakers (see note 10) or designated educational institutions (see note 12) or of any description of any of them: s 86(1), (8). As to the orders made see the Litter (Relevant Land of Principal Litter Authorities and Relevant Crown Land) Order 1991, SI 1991/476; and the Litter (Statutory Undertakers) (Designation and Relevant Land) Order 1991, SI 1991/1043 (amended by SI 1992/406; SI 1999/1443; SI 2003/1615).

8 The 'appropriate Crown authority' for any Crown land is the Crown Estate Commissioners, the minister in charge of the government department, or the body which occupies or manages the land on the Crown's behalf, as the case may be: Environmental Protection Act 1990 s 86(1), (5). As to Crown land generally see **CROWN PROPERTY**. As to the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq.

9 Environmental Protection Act 1990 s 89(1)(d). Land is 'Crown land' if it is land:

75 (1) occupied by the Crown Estate Commissioners as part of the Crown Estate;

76 (2) occupied by or for the purposes of a government department or for naval, military or air force purposes; or

77 (3) occupied or managed by any body acting on behalf of the Crown,

and is 'relevant Crown land' if it is Crown land which is open to the air and is land (but not a highway) to which the public is entitled or permitted to have access with or without payment: s 86(1), (5).

10 'Statutory undertaker' means: (1) any person authorised by any enactment to carry on any railway, light railway, tramway or road transport undertaking; (2) any operator of a relevant railway asset; (3) any person authorised by any enactment to carry on any canal, inland navigation, dock, harbour or pier undertaking; or (4) any relevant airport operator (within the meaning of the Airports Act 1986 Pt V (ss 57-62)) (see **AIR LAW** vol 2 (2008) PARA 189): Environmental Protection Act 1990 s 98(1), (6) (definition amended by SI 1999/1443).

11 Environmental Protection Act 1990 s 89(1)(e).

Subject to s 86(8) (see note 7), land is 'relevant land' of a designated statutory undertaker if it is land which is under the direct control of any statutory undertaker or a statutory undertaker of any description which may be designated by the Secretary of State by order for the purposes of Pt IV, being land to which the public is entitled or permitted to have access with or without payment or, in such cases as may be prescribed in the designation order, land in relation to which the public has no such right or permission: s 86(1), (6). As to the order made see the Litter (Statutory Undertakers) (Designation and Relevant Land) Order 1991, SI 1991/1043 (see note 7).

12 'Educational institution', in relation to England and Wales, means: (1) the Open University; (2) any institution which provides higher education or further education (or both) which is full-time education, being an institution which: (a) is maintained by grants made by the Secretary of State under the Education Act 1996 s 485 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 69); or (b) is maintained by a local education authority; (3) any institution within the higher education sector within the meaning of the Further and Higher Education Act 1992 s 91(5) (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 646); (4) any institution within the further education sector within the meaning of the Further and Higher Education Act 1992 s 91(3) (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 579); (5) any city technology college or city college for the technology of the arts or academy (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 496); (6) any community, foundation or voluntary school; (7) any community or foundation special school: Environmental Protection Act 1990 s 98(1), (2) (definition amended by the Further and Higher Education Act 1992 Sch 8 Pt II para 95, Sch 9; the Education Act 1996 s 582(1), Sch 37 Pt I para 100; the School Standards and Framework Act 1998 Sch 30 para 23; the Learning and Skills Act 2000 Sch 9 paras 1, 9; and the Education Act 2002 Sch 7 Pt 2 para 2, Sch 21 para 10, Sch 22 Pt 3).

13 Environmental Protection Act 1990 s 89(1)(f). See also note 14.

Subject to s 86(8) (see note 7), land is 'relevant land' of a designated educational institution if it is open to the air and is land which is under the direct control of the governing body of any educational institution or an educational institution of any description which may be designated by the Secretary of State by order for the purposes of Pt IV: s 86(1), (7). As to the order made see the Litter (Designated Educational Institutions) Order 1991, SI 1991/561.

14 Environmental Protection Act 1990 s 89(1). See also **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 382. Certain functions under s 89 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

The Secretary of State may, for the purposes of the transition to the duties imposed by the Environmental Protection Act 1990 s 89 on local authorities and educational bodies, by regulations make provision: (1) modifying s 89; or (2) modifying the Local Government Act 1988 Pt I (ss 1-16) (competition rules for functional work or works contracts) (repealed) (see now the Local Government Act 1999; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 688 et seq): Environmental Protection Act 1990 s 97(1). For these purposes, 'local authorities' means the local authorities mentioned in s 89(1)(a), (c), (2)(a) (see heads (1), (3), (a) in the text); and 'educational bodies' means the governing bodies mentioned in s 89(1)(f) (see head (6) in the text): s 97(3). Regulations under s 97 may make different provision for different descriptions of authorities, different areas or other different circumstances or cases: s 97(2). As to the regulations made see the Litter etc (Transitional Provisions) Regulations 1991, SI 1991/719.

As to graffiti and fly-posting see the Anti-social Behaviour Act 2003 ss 43-52; and PARAS 735-736.

15 Environmental Protection Act 1990 s 89(2)(a). See also notes 2, 14.

16 Environmental Protection Act 1990 s 89(2)(b).

17 Environmental Protection Act 1990 s 89(2). See also **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 382.

18 Ie the Environmental Protection Act 1990 s 89(1), (2).

19 Environmental Protection Act 1990 s 89(3).

20 Environmental Protection Act 1990 s 89(7). Different codes of practice may be prepared and issued under s 89(7) for different areas: s 89(8). The Secretary of State may issue modifications of, or withdraw, a code issued under s 89(7); but where a code is withdrawn, he must prepare and issue a new code in substitution for it: s 89(9).

A draft code prepared under s 89(7) must be laid before both Houses of Parliament and may not be issued until after the end of the period of 40 days beginning with the day on which the code was so laid, or if the draft is laid on different days, the later of the two days: s 89(11). If, within the period mentioned in s 89(11), either House resolves that the code the draft of which was laid before it should not be issued, the Secretary of State must not issue that code: s 89(12). No account may be taken in reckoning any period of 40 days for the purposes of s 89 of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 89(13).

As to the code of practice that has been produced see the Department of the Environment, Transport and the Regions - Environmental Protection Act 1990: Code of Practice on Litter and Refuse, which was published on 1 June 1999.

21 Environmental Protection Act 1990 s 89(10).

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724. Power to clean streets etc.

With the consent of any person who has an interest in or is the occupier of any relevant land¹, a local authority² may arrange for the cleaning of the land and may enter into an agreement with such a person for the payment by him of charges in respect of the cleaning³.

If any court, yard or passage which is used in common by the occupants of two or more buildings, but is not a highway maintainable at the public expense⁴, is not regularly swept and kept clean and free from rubbish or other accumulation to the satisfaction of the local authority⁵, the authority may cause it to be swept and cleansed⁶. The authority may recover any expenses reasonably incurred by it under these provisions from the occupiers of the buildings which front or abut on the court or yard, or to which the passage affords access, in such proportions as may be determined by the authority or, in case of dispute, by a magistrates' court⁷.

A local authority may make byelaws⁸: (1) for preventing nuisances occurring from snow, filth, dust, ashes and rubbish⁹; (2) for preventing the keeping of animals so as to be prejudicial to health¹⁰; (3) prescribing the times for the removal, or carriage through the streets, of any faecal or offensive or noxious matter or liquid¹¹; (4) requiring that the receptacle or vehicle used for the removal or carriage of any such matter or liquid is properly constructed and covered so as to prevent the escape of any such matter or liquid¹²; and (5) requiring the cleansing of any place where any such matter or liquid has been dropped or spilt in the course of removal or carriage¹³.

1 'Relevant land' means any land in the open air to which members of the public have access, either as of right or otherwise, and which is not the site of a highway: Control of Pollution Act 1974 s 22(3).

2 For the purposes of the Control of Pollution Act 1974 ss 22, 23 (see PARA 725), 'local authority' means the council of a district or London borough and the Common Council of the City of London; but, in relation to Wales, means the council of a county or county borough: s 22(4) (definition amended by the Local Government (Wales) Act 1994 Sch 9 para 10).

3 Control of Pollution Act 1974 s 22(3). Certain functions under s 22 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

As to graffiti and fly-posting see the Anti-social Behaviour Act 2003 ss 43-52; and PARAS 735-736.

4 The Public Health Act 1936 refers to a highway repairable by the inhabitants at large, but as from 1 January 1960 such highways became maintainable at the public expense: see the Highways Act 1959 s 38(1), (2)(a) (repealed); the Highways Act 1980 s 36(1); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 248.

5 As to the meaning of 'local authority' see PARA 99.

6 Public Health Act 1936 s 78(1).

7 See the Public Health Act 1936 s 78(2).

8 As to byelaws generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 553 et seq.

9 Public Health Act 1936 s 81(a).

10 Public Health Act 1936 s 81(b). As to the meaning of 'prejudicial to health' see **NUISANCE** vol 78 (2010) PARA 158.

11 Public Health Act 1936 s 82(1)(a). This applies whether the matter or liquid is in course of removal or carriage from within, or from without, or through, its district: see s 82(1)(a). See note 13.

12 Public Health Act 1936 s 82(1)(b). See note 13.

13 Public Health Act 1936 s 82(1)(c). If and so far as a byelaw made under s 82(1) is inconsistent with an order under the Road Traffic Regulation Act 1984 s 6 (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 747), the order prevails: Public Health Act 1936 s 82(2) (amended by the London Government Act 1963 Sch 11 Pt I para 18(2)); Interpretation Act 1978 s 17(2)(a).

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725. Prohibition of parking to facilitate street cleaning.

Where in the case of any part of a highway¹ (the 'relevant area') the highway authority² for the relevant area or the local authority³ in whose area the relevant area is situated considers that, in order to facilitate the cleaning of the relevant area on a particular day (the 'relevant day'), it is appropriate to prohibit the parking of vehicles in the relevant area during certain hours of the relevant day, the authority may give notice⁴ prohibiting such parking⁵.

If, either before or during the hours on the relevant day which are specified in such a notice, the authority displays notices in the relevant area stating that the prohibition on parking is not to come into force or is to cease to be in force, the effect of the notices is to prevent the prohibition coming into force or, as the case may be, to terminate it⁶.

The highway authority for any part of a highway and the local authority in whose area that part is situated must co-operate in performing these functions⁷; and where a highway authority or a local authority gives notice prohibiting parking in respect of any part of a highway for which it is the highway authority or, as the case may be, which is within its area, any other authority which is the highway authority for that part or which is the local authority within whose area that part is situated is entitled, with the approval of the authority which gave the notice, to act in pursuance of these provisions as if the other authority had given similar notice⁸.

Where any parking in the relevant area is prohibited⁹ during specified hours on the relevant day, no right of action accrues to any person by reason of the fact that all or some of the cleaning of the relevant area which the highway authority or, as the case may be, the local authority proposes to do or has done during those hours is not cleaning which that authority has or had power to do if the other of those authorities has or had power to do it¹⁰.

1 For the purposes of the Control of Pollution Act 1974 s 23, 'highway' means highway maintainable at the public expense within the meaning of the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 7): Control of Pollution Act 1974 s 22(4) (definition amended by the Highways Act 1980 Sch 24 para 24). Any reference in the Control of Pollution Act 1974 s 23 to a part of a highway includes any such part on which the parking of vehicles is, apart from s 23, authorised by virtue of any enactment, whether on payment or free of charge; and where the parking of vehicles on such a part is prohibited by virtue of s 23 a person is not entitled to recover any sum paid by him for parking there: see s 23(8).

2 As to highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 49 et seq.

3 As to the meaning of 'local authority' for these purposes see PARA 724 note 2.

4 Such a notice must specify the relevant area, the relevant day and the hours in question; and a copy of the notice must be served on the occupier of any premises adjoining the relevant area and be conspicuously displayed at places in the relevant area: Control of Pollution Act 1974 s 23(2) (substituted by the Local Government, Planning and Land Act 1980 Sch 2 para 11). The effect of the giving of such a notice and of the service and display of copies of it as so required is to suspend the operation of any provision which is contained in an order under the Road Traffic Regulation Act 1984 (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 742 et seq) or a local enactment and which authorises, designates or regulates the use of a street parking place in the relevant area: Control of Pollution Act 1974 s 23(2A) (s 23(2A), (2B) added by the Local Government, Planning and Land Act 1980 Sch 2 para 11). The authority giving the notice must cover up traffic signs and parking meters in the relevant area during the hours of the relevant day specified in the notice, but without prejudice to the effect of the notice: Control of Pollution Act 1974 s 23(2B) (as so added). 'Parking meter', 'traffic sign' and 'street parking place' have the meanings respectively assigned to them by the Road Traffic Regulation Act 1984 s 46(2)(a), s 64(1), s 142(1) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARAS 752, 810, 830): Control of

Pollution Act 1974 s 23(9) (added by the Local Government, Planning and Land Act 1980 Sch 2 para 11; and amended by the Road Traffic Regulation Act 1984 s 146, Sch 13 para 30).

⁵ Control of Pollution Act 1974 s 23(1). Certain functions under s 23 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Regulations may provide that the Road Traffic Regulation Act 1984 ss 99-102 (removal, storage and disposal of vehicles illegally parked) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 870 et seq) have effect in relation to any vehicle which is or was standing on any part of a highway while parking on that part is or was prohibited by virtue of the Control of Pollution Act 1974 s 23, with such modifications as are prescribed: s 23(4) (amended by the Local Government, Planning and Land Act 1980 Sch 34 Pt II; and the Road Traffic Regulation Act 1984 Sch 13 para 30). At the date at which this volume states the law no such regulations had been made.

⁶ Control of Pollution Act 1974 s 23(5) (substituted by the Local Government, Planning and Land Act 1980 Sch 2 para 11).

⁷ See the Control of Pollution Act 1974 s 23(6).

⁸ Control of Pollution Act 1974 s 23(6). No authority may issue a notice under s 23 whose effect would be to suspend the operation of provisions of an order not made by the highway authority without first consulting the authority who made the order: s 23(6A) (added by the Local Government, Planning and Land Act 1980 Sch 2 para 11).

⁹ ie by virtue of a notice given as mentioned in the Control of Pollution Act 1974 s 23(1).

¹⁰ Control of Pollution Act 1974 s 23(7).

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726. Litter clearing notices.

A principal litter authority¹ may² serve a notice (a 'litter clearing notice')³ in relation to any land⁴ in its area which is open to the air⁵.

A litter clearing notice is to require the person on whom it is served: (1) to clear the land of the litter or refuse⁶; and (2) if the principal litter authority is satisfied that the land is likely to become defaced by litter or refuse again, to take reasonable steps to prevent it from becoming so defaced⁷.

A litter clearing notice must be served on the occupier of the land to which it relates⁸ or, if the land is not occupied, the owner⁹. A principal litter authority must, in discharging its functions¹⁰, have regard to any guidance given to the authority by the appropriate person¹¹.

Where a principal litter authority proposes to serve a litter clearing notice in respect of any land but is unable after reasonable inquiry to ascertain the name or proper address of the occupier of the land (or, if the land is unoccupied, the owner):

- 1735 (a) the authority may post the notice on the land (and may enter any land to the extent reasonably necessary for that purpose)¹²; and
- 1736 (b) the notice is to be treated as having been served upon the occupier (or, if the land is unoccupied, the owner) at the time the notice is posted¹³.

A person on whom a litter clearing notice is served¹⁴ may appeal against it to a magistrates' court¹⁵, and the grounds on which such an appeal may be made are that:

- 1737 (i) there is a material defect or error in, or in connection with, the notice¹⁶;
- 1738 (ii) the notice should have been served on another person¹⁷;
- 1739 (iii) the land is not defaced by litter or refuse so as to be detrimental to the amenity of the locality¹⁸;
- 1740 (iv) the action required is unfair or unduly onerous¹⁹.

On the determination of such an appeal, the magistrates' court must: (A) quash the notice²⁰; (B) modify the notice (including modifying it by extending the period specified in it)²¹; or (C) dismiss the appeal²².

Where the person on whom a litter clearing notice is served²³ fails without reasonable excuse to comply with any requirement imposed by the notice²⁴, the person is guilty of an offence²⁵. The principal litter authority which served the notice or any person authorised by the authority may enter the land to which the notice relates and clear it of litter and refuse²⁶.

Where on any occasion it appears to an authorised officer²⁷ of a principal litter authority that a person has committed an offence²⁸ in relation to a notice served by that authority²⁹, the authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the principal litter authority³⁰. The amount of a fixed penalty thus payable³¹ to a principal litter authority is the amount specified by the authority in relation to its area³². The principal litter authority to which a fixed penalty is payable may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority³³.

In any proceedings a certificate which purports to be signed by or on behalf of the chief finance officer³⁴ of a principal litter authority, and states that payment of a fixed penalty was or was not received by the date specified in the certificate, is evidence of the facts stated³⁵.

1 As to principal litter authorities see PARA 722 note 2.

2 Ie in accordance with the Environmental Protection Act 1990 s 92A: see the text and notes 3-13.

3 The form and content of a litter clearing notice is to be such as the appropriate person may by order specify: Environmental Protection Act 1990 s 92A(8) (ss 92A-92C added by the Clean Neighbourhoods and Environment Act 2005 s 20(2)). As to the meaning of 'appropriate person' see PARA 722 note 2.

4 A litter clearing notice may not be served in relation to land of any of the following descriptions: (1) a highway maintainable at the public expense (see PARA 723 note 1); (2) land under the direct control of a principal litter authority (see PARA 722 note 2); (3) Crown land (see PARA 723 note 9); (4) relevant land of a designated statutory undertaker (see PARA 723 note 11); (5) relevant land of a designated educational institution (see PARA 723 note 13); (6) land which is covered (but 'open to the air' for the purposes of the Environmental Protection Act 1990 Pt IV (ss 86-99) by virtue of s 86(13), ie open to the air on at least one side) and to which the public are not entitled or permitted to have access, with or without payment: s 92A(11) (as added: see note 3).

5 Environmental Protection Act 1990 s 92A(1) (as added: see note 3). Certain functions under s 92A are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Before serving a litter clearing notice in relation to any land a principal litter authority must be satisfied that the land is defaced by litter or refuse so as to be detrimental to the amenity of the locality: Environmental Protection Act 1990 s 92A(2) (as so added). As to the meaning of 'litter' see PARA 721 note 1.

Section 92A(1) does not apply to an English county council for an area for which there is a district council: s 92A(10) (as so added). As to local government areas and authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

As to graffiti and fly-posting see the Anti-social Behaviour Act 2003 ss 43-52; and PARAS 735-736.

6 Environmental Protection Act 1990 s 92A(3)(a) (as added: see note 3). A litter clearing notice imposing a requirement under s 92A(3)(a) may specify: (1) a period within which the requirement must be complied with; (2) standards of compliance: s 92A(5) (as so added). A period specified under head (1) above may not be less than 28 days beginning with the day on which the notice is served: s 92A(6) (as so added).

7 Environmental Protection Act 1990 s 92A(3)(b) (as added: see note 3).

8 Environmental Protection Act 1990 s 92A(4)(a) (as added: see note 3).

9 Environmental Protection Act 1990 s 92A(4)(b) (as added: see note 3).

10 Ie its functions under the Environmental Protection Act 1990 s 92A.

11 Environmental Protection Act 1990 s 92A(7) (as added: see note 3).

12 Environmental Protection Act 1990 s 92A(9)(a) (as added: see note 3). As to exclusion of liability in regard to s 92A(9) see s 97B; and PARA 734.

13 Environmental Protection Act 1990 s 92A(9)(b) (as added: see note 3). See note 12.

14 Ie served under the Environmental Protection Act 1990 s 92A.

15 Environmental Protection Act 1990 s 92B(1) (as added: see note 3). Such an appeal must be made within a period of 21 days beginning with the day on which the notice is served: s 92B(2) (as so added). A notice against which an appeal under s 92B is made is of no effect pending the final determination or withdrawal of the appeal: s 92B(4) (as so added).

16 Environmental Protection Act 1990 s 92B(3)(a) (as added: see note 3).

17 Environmental Protection Act 1990 s 92B(3)(b) (as added: see note 3).

18 Environmental Protection Act 1990 s 92B(3)(c) (as added: see note 3).

- 19 Environmental Protection Act 1990 s 92B(3)(d) (as added: see note 3).
- 20 Environmental Protection Act 1990 s 92B(5)(a) (as added: see note 3).
- 21 Environmental Protection Act 1990 s 92B(5)(b) (as added: see note 3).
- 22 Environmental Protection Act 1990 s 92B(5)(c) (as added: see note 3).
- 23 Ie under the Environmental Protection Act 1990 s 92A: see the text and notes 1-13.
- 24 Environmental Protection Act 1990 s 92C(1) (as added: see note 3).
- 25 Environmental Protection Act 1990 s 92C(2) (as added: see note 3). Such a person is liable on summary conviction to a fine not exceeding level 4 on the standard scale: see s 92C(2) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.
- 26 Environmental Protection Act 1990 s 92C(3) (as added: see note 3). As to exclusion of liability in regard to s 92C(3) see s 97B; and PARA 734.
- Where a principal litter authority exercises the power in s 92C(3), it may require the person on whom the notice was served to pay a reasonable charge in respect of the exercise of the power: s 92C(4) (as so added). A principal litter authority may for the purposes of s 92C(4) impose charges by reference to land of particular descriptions or categories (including categories determined by reference to surface area): s 92C(4) (as so added).
- 27 For these purposes, 'authorised officer', in relation to a principal litter authority, means an officer of the authority who is authorised in writing by the authority for the purposes of giving notices under the Environmental Protection Act 1990 s 94A: s 94A(7) (s 94A added by the Clean Neighbourhoods and Environment Act 2005 s 22).
- 28 Ie an offence under the Environmental Protection Act 1990 s 92C(2) (see the text and note 25) or s 94(8) (see PARA 727).
- 29 Environmental Protection Act 1990 s 94A(1) (as added: see note 27).
- 30 Environmental Protection Act 1990 s 94A(2) (as added: see note 27). The provisions of s 88(2)-(5) (fixed penalty notices for leaving litter) (see PARA 722) apply in relation to notices given under s 94A as they apply in relation to notices given under those provisions: s 94A(3) (as so added).
- 31 Ie payable under the Environmental Protection Act 1990 s 94A.
- 32 Environmental Protection Act 1990 s 94A(4)(a) (as added: see note 27). An authority may specify different amounts for the two different offences referred to in s 94A(1): see s 94A(4)(a) (as so added). Alternatively, if no amount is specified under s 94A(4)(a), the amount is £100: s 94A(4)(b) (as so added). As to fixed penalties generally see s 97A; and PARA 733. The amount must not be less than £100 and not more than £150: Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663, reg 2(2)(b).
- 33 Environmental Protection Act 1990 s 94A(5) (as added: see note 27). The amount must not be less than £60: Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663, reg 3(2)(b).
- 34 For these purposes, 'chief finance officer', in relation to a principal litter authority, means the person having responsibility for the financial affairs of that authority: Environmental Protection Act 1990 s 94A(7) (as added: see note 27).
- 35 Environmental Protection Act 1990 s 94A(6) (as added: see note 27).

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727. Street litter control notices.

A principal litter authority other than an English county council or a joint board¹ may, with a view to the prevention of accumulations of litter or refuse in and around any street² or open land³ adjacent to any street, issue notices ('street litter control notices') imposing requirements on occupiers of premises⁴ in relation to such litter or refuse⁵.

If the authority is satisfied, in respect of any premises which are of a prescribed⁶ description and have a frontage on a street in its area, that:

- 1741 (1) there is recurrent defacement by litter or refuse of any land, being part of the street or open land adjacent to the street, which is in the vicinity of the premises⁷; or
- 1742 (2) the condition of any part of the premises which is open land in the vicinity of the frontage is, and if no notice is served is likely to continue to be, detrimental to the amenities of the locality by reason of the presence of litter or refuse⁸; or
- 1743 (3) there is produced, as a result of the activities carried on on the premises, quantities of litter or refuse of such nature and in such amounts as are likely to cause the defacement of any part of the street, or of open land adjacent to the street, which is in the vicinity of the premises⁹,

the authority may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises¹⁰. A notice must¹¹:

- 1744 (a) identify the premises and state the grounds¹² on which it is issued¹³;
- 1745 (b) specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street¹⁴;
- 1746 (c) specify, in relation to that area or any part of it, such reasonable requirements as the authority considers appropriate in the circumstances¹⁵.

A person commits an offence if, without reasonable excuse, he fails to comply with a requirement imposed on him by a notice¹⁶.

1 As to principal litter authorities see PARA 722 note 2.

2 For these purposes, 'street' means a relevant highway or any other highway over which there is a right of way on foot: Environmental Protection Act 1990 s 93(4). As to the meanings of 'highway' and 'relevant highway' see PARA 723 note 1.

3 For these purposes, 'open land' means land in the open air: Environmental Protection Act 1990 s 93(4).

4 For these purposes, the 'premises', in relation to a notice, means the premises in respect of which the notice is issued: Environmental Protection Act 1990 s 93(4). 'Notice' means a street litter control notice: s 93(4).

5 Environmental Protection Act 1990 s 93(1) (amended by the Local Government (Wales) Act 1994 Sch 9 para 17(10)). Certain functions under s 93 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

The requirements which may be imposed by a notice must relate to the clearing of litter or refuse from the specified area (see note 14) and may in particular require: (1) the provision or emptying of receptacles for litter or refuse; (2) the doing within a period specified in the notice of any such thing as may be so specified

(including the standards to which any such thing must be done); or (3) the doing (while the notice remains in force) at such times or intervals, or within such periods, of any such thing as may be so specified: Environmental Protection Act 1990 s 94(4) (amended by the Clean Neighbourhoods and Environment Act 2005 s 21(2)). A notice may not require the clearing of litter or refuse from any carriageway, except at a time when the carriageway is closed to all vehicular traffic: Environmental Protection Act 1990 s 94(4).

In relation to so much of the specified area as is not part of the premises the authority must take account, in determining what requirements to impose, of its own duties under the Environmental Protection Act 1990 Pt IV (ss 86-99) or otherwise, and of any similar duties of any other local authority, in relation to that land: s 94(5).

As to graffiti and fly-posting see the Anti-social Behaviour Act 2003 ss 43-52; and PARAS 735-736.

6 le prescribed under the Environmental Protection Act 1990 s 94(1)(a): see note 15.

7 Environmental Protection Act 1990 s 93(2)(a).

8 Environmental Protection Act 1990 s 93(2)(b).

9 Environmental Protection Act 1990 s 93(2)(c).

10 Environmental Protection Act 1990 s 93(2). An authority proposing to serve a notice must: (1) inform the person on whom the notice is to be served; (2) give him the opportunity to make representations about the notice within the period of 21 days beginning with the day on which he is so informed; and (3) take any representations so made into account in making its decision: s 94(6).

A person on whom a notice is served may appeal against the notice to a magistrates' court by way of summary application; and the court may quash the notice or may quash, vary or add to any requirement imposed by the notice: s 94(7).

As to fixed penalty notices see PARA 733.

11 le subject to the Environmental Protection Act 1990 s 94(2), (3), (4): see notes 5, 14, 15.

12 le under the Environmental Protection Act 1990 s 93(2): see the text and notes 7-10.

13 Environmental Protection Act 1990 s 93(3)(a). See also note 15.

14 Environmental Protection Act 1990 s 93(3)(b). See also note 15. For these purposes, an area which includes land on both sides of the frontage of the premises is to be treated as an area adjoining that frontage: s 93(3).

A vehicle or stall or other moveable structure which is used for one or more commercial or retail activities while parked or set at a particular place on or verging a street is to be treated for the purposes of s 93 and s 94 as if it were premises situated at that place having a frontage on that street in the place where it is parked or set: s 93(3A) (s 93(3A), (3B) added by the Clean Neighbourhoods and Environment Act 2005 s 21(1)). For these purposes, 'vehicle' means any vehicle intended or adapted for use on roads: Environmental Protection Act 1990 s 93(3B) (as so added).

The land comprised in a specified area: (1) must include only land of one or more of the descriptions prescribed under s 94(1)(b) (see note 15); (2) must not include any land which is not: (a) part of the premises; (b) part of a street; (c) relevant land of a principal litter authority; or (d) land under the direct control of any other local authority; and (3) must not exceed any applicable maximum area prescribed under s 94(1)(c) (see note 15): s 94(3) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 5 Pt 2). 'Specified area' means the area specified in a notice under the Environmental Protection Act 1990 s 93(3)(b): s 93(4). As to the meaning of 'relevant land' of a principal litter authority see PARA 723 note 7.

15 Environmental Protection Act 1990 s 93(3)(c). The Secretary of State may by order prescribe:

78 (1) the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued (s 94(1)(a));

79 (2) the descriptions of land which may be included in a specified area (s 94(1)(b)); and

80 (3) the maximum area of land which may be included in a specified area (s 94(1)(c)),

and different descriptions or maximum dimensions may be prescribed under head (2) or head (3) above for different cases or circumstances: s 94(1). As to the order made see the Street Litter Control Notices Order 1991, SI 1991/1324 (amended by SI 1997/632; and SI 2007/1524). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

The power to describe premises or land under the Environmental Protection Act 1990 s 94(1)(a) (see head (1) above) or s 94(1)(b) (see head (2) above) includes power to describe the premises or land by reference to occupation or ownership or to the activities carried on there: s 94(2).

16 Environmental Protection Act 1990 s 94(8) (s 94(8), (9) substituted by the Clean Neighbourhoods and Environment Act 2005 s 21(3)). A person guilty of an offence under the Environmental Protection Act 1990 s 94(8) is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 94(9) (as so substituted). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to fixed penalty notices see PARA 733.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/11. LITTER AND GRAFFITI/(1) PROVISIONS RELATING TO LITTER/728. Distribution of free printed matter.

728. Distribution of free printed matter.

A person commits an offence¹ if he distributes² any free³ printed matter without the consent⁴ of a principal litter authority⁵ on any land which is designated⁶ by the authority, where the person knows that the land is so designated⁷. A person also commits an offence⁸ if he causes another person to distribute any free printed matter without the consent of a principal litter authority on any land so designated by the authority⁹.

A principal litter authority may on the application of any person consent to that person or any other person (identified specifically or by description) distributing free printed matter on any land designated by the authority¹⁰. Such consent may be given without limitation or may be limited: (1) by reference to the material to be distributed¹¹; (2) by reference to a particular period, or particular times or dates¹²; (3) by reference to any part of the designated land¹³; (4) to a particular distribution¹⁴.

A principal litter authority need not give such consent to any applicant where it considers that the proposed distribution would in all the circumstances be likely to lead to defacement of the designated land¹⁵, nor need consent be given to any applicant if within the period of five years ending on the date of his application he has been convicted of an unauthorised distribution offence¹⁶ or he has paid a fixed penalty¹⁷. Consent may be given subject to such conditions as the authority considers necessary or desirable for protecting the designated land from defacement or the effective operation and enforcement of these provisions¹⁸. Consent given by a principal litter authority¹⁹ may at any time be revoked (entirely or to any extent) by notice to the person to whom it was given, where: (a) he has failed to comply with any condition subject to which it was given²⁰; or (b) he is convicted of an unauthorised distribution offence²¹ or pays a fixed penalty²².

Where it appears to an authorised officer²³ of a principal litter authority that a person distributing any printed matter is committing an unauthorised distribution offence²⁴, he may seize all or any of it²⁵. Any person claiming to own any printed matter thus seized may apply to a magistrates' court for an order that the printed matter be released to him²⁶. Any printed matter thus seized (and not released)²⁷ must be returned to the person from whom it is seized: (i) at the conclusion of proceedings for the offence (unless the court orders otherwise)²⁸; (ii) at the end of the period in which proceedings for the offence may be instituted, if no such proceedings have been instituted in that period (or have been instituted but discontinued)²⁹.

Where on any occasion it appears to an authorised officer of a principal litter authority that a person has committed an unauthorised distribution offence³⁰ on any land designated by the authority³¹, the authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the principal litter authority³². The amount of the fixed penalty thus payable to a principal litter authority is the amount specified by the authority in relation to its area³³. The principal litter authority to which a fixed penalty is thus payable may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority³⁴.

In any proceedings a certificate which purports to be signed on behalf of the chief finance officer³⁵ of a principal litter authority, and states that payment of a fixed penalty was or was not received by a date specified in the certificate, is evidence of the facts stated³⁶.

If an authorised officer of a principal litter authority proposes to give a person a fixed penalty notice³⁷, the officer may require the person to give him his name and address³⁸. A person

commits an offence³⁹ if he fails to give his name and address when required to do so or if he gives a false or inaccurate name or address in response to such a requirement⁴⁰.

1 A person guilty of an offence under the Environmental Protection Act 1990 Sch 3A para 1 is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 94B, Sch 3A para 1(4) (s 94B, Sch 3A added by the Clean Neighbourhoods and Environment Act 2005 s 23). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

2 For the purposes of the Environmental Protection Act 1990 Sch 3A, to 'distribute' printed matter means to give it out to, or offer or make it available to, members of the public and includes placing it on or affixing it to vehicles, but does not include putting it inside a building or letter-box: Sch 3A para 1(6)(a) (as added: see note 1).

For the purposes of Sch 3A a person does not distribute printed matter if the distribution takes place inside a public service vehicle (within the meaning of the Public Passenger Vehicles Act 1981) (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1136); Environmental Protection Act 1990 Sch 3A para 1(7) (as so added).

Nothing in Sch 3A para 1 applies to the distribution of printed matter: (1) by or on behalf of a charity within the meaning of the Charities Act 1993 (see **CHARITIES** vol 8 (2010) PARA 1), where the printed matter relates to or is intended for the benefit of the charity; (2) where the distribution is for political purposes or for the purposes of a religion or belief: Environmental Protection Act 1990 Sch 3A para 1(4) (as so added).

3 For the purposes of the Environmental Protection Act 1990 Sch 3A, printed matter is 'free' if it is distributed without charge to the persons to whom it is distributed: Sch 3A para 1(6)(b) (as added: see note 1).

4 As to consent see the text and notes 15-22.

5 As to principal litter authorities see PARA 722 note 2.

6 Ie designated under the Environmental Protection Act 1990 Sch 3A.

A principal litter authority may by order in accordance with Sch 3A para 2 designate land in its area for the purposes of Sch 3A: Sch 3A para 2(1) (as added: see note 1). The provisions of Sch 3A para 2(1) do not apply to an English county council for an area for which there is a district council: Sch 3A para 2(2) (as so added). The land designated must consist of: (1) relevant land of the authority (see PARA 723 note 7); (2) all or part of any relevant highway (see PARA 723 note 1) for which the authority is responsible; or (3) both: Sch 3A para 2(2) (as so added). A principal litter authority may only designate land where it is satisfied that the land is being defaced by the discarding of free printed matter which has been distributed there: Sch 3A para 2(3) (as so added). As to local government areas and authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

Where a principal litter authority proposes to make an order under Sch 3A para 2(1) in respect of any land, it must publish a notice of its proposal in at least one newspaper circulating in an area which includes the land and post such a notice on the land: Sch 3A para 2(4) (as so added). Such a notice must specify: (a) the land proposed to be designated; (b) the date on which it is proposed that the order is to come into force (which may not be earlier than the end of a period of 28 days beginning with the day on which the notice is given); (c) the fact that objections may be made to the proposal, how they may be made and the period within which they may be made (being a period of at least 14 days beginning with the day on which the notice is given): Sch 3A para 2(5) (as so added). Where after giving such notice and taking into account any objections duly made pursuant to head (c) above an authority decides to make an order under Sch 3A para 2(1) in respect of any or all of the land in respect of which the notice was given, the authority must publish a notice of its decision in at least one newspaper circulating in an area which includes the land and post such a notice on the land: Sch 3A para 2(6) (as so added). A notice under Sch 3A para 2(6) must specify the date on which the order is to come into force, being a date not earlier than: (i) the end of the period of 14 days beginning with the day on which the notice is given; and (ii) the date referred to in head (b) above: Sch 3A para 2(7) (as so added).

A principal litter authority may at any time revoke an order under Sch 3A para 2(1) in respect of any land to which the order relates: Sch 3A para 2(8) (as so added). A principal litter authority must publish a notice of any such revocation in at least one newspaper circulating in an area which includes the land in question and post such a notice on the land: Sch 3A para 2(9) (as so added).

7 Environmental Protection Act 1990 Sch 3A para 1(1) (as added: see note 1). Certain functions under s 94B, Sch 3A are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

8 As to the penalty see note 1.

9 Environmental Protection Act 1990 Sch 3A para 1(2) (as added: see note 1). A person is not guilty of an offence under Sch 3A para 1(2) if he took reasonable steps to ensure that the distribution did not occur on any land designated under Sch 3A: Sch 3A para 1(3) (as so added).

10 Environmental Protection Act 1990 Sch 3A para 3(1) (as added: see note 1). The text refers to designation under Sch 3A.

A principal litter authority may require the payment of a fee before giving consent under Sch 3A para 3: Sch 3A para 4(1) (as so added). The amount of a fee is to be such as the authority may determine, but may not be more, when taken together with all other fees charged by the authority under Sch 3A para 4, than is reasonable to cover the costs of operating and enforcing Sch 3A: Sch 3A para 4(2) (as so added).

Any person aggrieved by a decision of a principal litter authority under Sch 3A para 3: (1) to refuse consent; (2) to impose any limitation or condition subject to which consent is given; (3) to revoke consent (or to revoke it to any extent), may appeal against the decision to a magistrates' court: Sch 3A para 5(1) (as so added). A magistrates' court may on such an appeal: (a) uphold any refusal of consent or require the authority to grant consent (without limitation or condition or subject to any limitation or condition); (b) require the authority to revoke or vary any condition; (c) uphold or quash revocation of consent (or uphold or quash revocation to any extent): Sch 3A para 5(2) (as so added).

11 Environmental Protection Act 1990 Sch 3A para 3(2)(a) (as added: see note 1).

12 Environmental Protection Act 1990 Sch 3A para 3(2)(b) (as added: see note 1).

13 Environmental Protection Act 1990 Sch 3A para 3(2)(c) (as added: see note 1).

14 Environmental Protection Act 1990 Sch 3A para 3(2)(d) (as added: see note 1).

15 Environmental Protection Act 1990 Sch 3A para 3(3) (as added: see note 1).

16 Ie an offence under the Environmental Protection Act 1990 Sch 3A para 1: see the text and notes 1-9.

17 Environmental Protection Act 1990 Sch 3A para 3(4) (as added: see note 1). As to the fixed penalty see Sch 3A para 7; and the text and notes 31-40.

18 Environmental Protection Act 1990 Sch 3A para 3(5) (as added: see note 1). The provisions referred to in the text are those in Sch 3A.

The conditions which may be imposed by a principal litter authority under Sch 3A para 3 include conditions requiring any person distributing printed matter pursuant to consent thus given to produce on demand written evidence of the consent to an authorised officer of the authority: Sch 3A para 3(5) (as so added). For the purposes of Sch 3A, 'authorised officer', in relation to a principal litter authority, means: (1) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under Sch 3A para 7 (see the text and notes 31-40); (2) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function; and (3) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices: Sch 3A para 8 (as so added).

19 Ie under the Environmental Protection Act 1990 Sch 3A para 3.

20 Environmental Protection Act 1990 Sch 3A para 3(7)(a) (as added: see note 1).

21 Ie an offence under the Environmental Protection Act 1990 Sch 3A para 1: see the text and notes 1-9.

22 Environmental Protection Act 1990 Sch 3A para 3(7)(b) (as added: see note 1). As to the fixed penalty see Sch 3A para 7; and the text and notes 31-40.

Any condition imposed under Sch 3A para 3 in relation to any consent may be varied or revoked by notice given to the person to whom the consent was given: Sch 3A para 7(8) (as so added).

23 See note 18.

24 Ie an offence under the Environmental Protection Act 1990 Sch 3A para 1: see the text and notes 1-9.

25 Environmental Protection Act 1990 Sch 3A para 6(1) (as added: see note 1).

26 Environmental Protection Act 1990 Sch 3A para 6(2) (as added: see note 1).

On an application under Sch 3A para 6(2), if the magistrates' court considers that the applicant does own the printed matter, the court must order the principal litter authority to release it to him, except to the extent that

the court considers that the authority needs to retain it for the purposes of proceedings relating to an offence under Sch 3A para 1: Sch 3A para 6(3) (as so added).

27 See note 26.

28 Environmental Protection Act 1990 Sch 3A para 6(4)(a) (as added: see note 1).

Where it is not possible to return any printed matter under Sch 3A para 6(4) because the name and address of the person from whom it was seized are not known, a principal litter authority may dispose of or destroy it: Sch 3A para 6(5) (as so added).

29 Environmental Protection Act 1990 Sch 3A para 6(4)(b) (as added: see note 1). See note 28.

30 Ie an offence under the Environmental Protection Act 1990 Sch 3A para 1: see the text and notes 1-9.

31 Environmental Protection Act 1990 Sch 3A para 7(1) (as added: see note 1). The text refers to designation under Sch 3A.

32 Environmental Protection Act 1990 Sch 3A para 7(2) (as added: see note 1). The provisions of s 88(2)-(5) (fixed penalty notices for leaving litter) (see PARA 722) apply in relation to notices given under Sch 3A para 7 as they apply in relation to notices given under those provisions: Sch 3A para 7(3) (as so added).

33 Environmental Protection Act 1990 Sch 3A para 7(4)(a) (as added: see note 1). Alternatively, if no amount is so specified, the amount is £75: Sch 3A para 7(4)(b) (as so added). As to fixed penalties generally see s 97A; and PARA 733. The amount must not be less than £75 and not more than £150: Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663, reg 2(1)(b).

34 Environmental Protection Act 1990 Sch 3A para 7(5) (as added: see note 1). The amount must not be less than £50: Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663, reg 3(1)(b).

35 For these purposes, 'chief finance officer', in relation to a principal litter authority, means the person having responsibility for the financial affairs of that authority: Environmental Protection Act 1990 Sch 3A para 7(10) (as added: see note 1).

36 Environmental Protection Act 1990 Sch 3A para 7(6) (as added: see note 1).

37 Ie a notice under the Environmental Protection Act 1990 Sch 3A para 7.

38 Environmental Protection Act 1990 Sch 3A para 7(7) (as added: see note 1).

39 A person guilty of an offence under the Environmental Protection Act 1990 Sch 3A para 7(8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 3A para 7(9) (as added: see note 1).

40 Environmental Protection Act 1990 Sch 3A para 7(8) (as added: see note 1).

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729. Summary proceedings by persons aggrieved by litter.

A magistrates' court may act under the following provisions on a complaint made by any person on the ground that he is aggrieved by the defacement, by litter or refuse, of:

- 1747 (1) any relevant highway¹;
- 1748 (2) any trunk road² which is a special road³;
- 1749 (3) any relevant land of a principal litter authority⁴;
- 1750 (4) any relevant Crown land⁵;
- 1751 (5) any relevant land of a designated statutory undertaker⁶; or
- 1752 (6) any relevant land of a designated educational institution⁷.

A magistrates' court may also act under these provisions on a complaint made by any person on the ground that he is aggrieved by the want of cleanliness of any relevant highway or any trunk road which is a special road⁸.

A principal litter authority may not be treated as a person aggrieved for the purposes of proceedings under these provisions⁹.

Proceedings under these provisions must be brought against the person who has the duty to keep the land clear¹⁰ or to keep the highway clean¹¹, as the case may be¹². Before instituting proceedings under these provisions against any person, the complainant must give to the person not less than five days' written notice of his intention to make the complaint and the notice must specify the matter complained of¹³. If the magistrates' court is satisfied that the highway or land in question is defaced by litter or refuse or, in the case of a highway, is wanting in cleanliness, the court may make an order (a 'litter abatement order') requiring the defendant to clear the litter or refuse away or, as the case may be, clean the highway within a time specified in the order¹⁴. A person who, without reasonable excuse, fails to comply with a litter abatement order is guilty of an offence¹⁵. A code of practice¹⁶ is admissible in evidence in any proceedings under the above provisions and if any provision of such a code appears to the court to be relevant to any question in the proceedings it must be taken into account in determining that question¹⁷.

Where a magistrates' court is satisfied on the hearing of a complaint under these provisions:

- 1753 (a) that, when the complaint was made to it, the highway or land in question was defaced by litter or refuse or, as the case may be, was wanting in cleanliness¹⁸; and
- 1754 (b) that there were reasonable grounds for bringing the complaint¹⁹,

the court must order the defendant to pay such reasonable sum to the complainant as the court may determine in respect of the expenses incurred by the complainant in bringing the complaint and the proceedings before the court²⁰.

1 Environmental Protection Act 1990 s 91(1)(a). As to the meaning of 'relevant highway' see PARA 723 note 1. Certain functions under s 91 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

2 As to the meaning of 'trunk road' see PARA 723 note 1.

3 Environmental Protection Act 1990 s 91(1)(b). As to the meaning of 'special road' see PARA 723 note 1.

4 Environmental Protection Act 1990 s 91(1)(c). As to principal litter authorities see PARA 722 note 2; and as to the meaning of 'relevant land' of a principal litter authority see PARA 723 note 7.

5 Environmental Protection Act 1990 s 91(1)(d). As to the meaning of 'relevant Crown land' see PARA 723 note 9.

6 Environmental Protection Act 1990 s 91(1)(e) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 6). As to the meanings of 'statutory undertaker' and 'relevant land' of a designated statutory undertaker see PARA 723 note 11.

7 Environmental Protection Act 1990 s 91(1)(f). As to the meanings of 'educational institution' and 'relevant land' of a designated educational institution see PARA 723 note 13.

As to graffiti and fly-posting see the Anti-social Behaviour Act 2003 ss 43-52; and PARAS 735-736.

8 Environmental Protection Act 1990 s 91(2).

9 Environmental Protection Act 1990 s 91(3). As to persons aggrieved see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 66.

10 Ie under the Environmental Protection Act 1990 s 89(1): see PARA 723.

11 Ie under the Environmental Protection Act 1990 s 89(2): see PARA 723.

12 Environmental Protection Act 1990 s 91(4).

13 Environmental Protection Act 1990 s 91(5).

14 Environmental Protection Act 1990 s 91(6). The magistrates' court must not make a litter abatement order if the defendant proves that he has complied, as respects the highway or land in question, with his duty under s 89(1), (2) (see PARA 723): s 91(7). The magistrates' court must not make a litter abatement order where it appears that the matter complained of is the result of directions given to the local authority under s 89(6) (see PARA 723) by the highway authority: s 91(8).

15 Environmental Protection Act 1990 s 91(9). A person guilty of an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction: s 91(9). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

In any proceedings for an offence under s 91(9), it is a defence for the defendant to prove that he has complied, as respects the highway or land in question, with his duty under s 89(1), (2) (see PARA 723): s 91(10).

16 Ie under the Environmental Protection Act 1990 s 89(7): see PARA 723.

17 Environmental Protection Act 1990 s 91(11).

18 Environmental Protection Act 1990 s 91(12)(a).

19 Environmental Protection Act 1990 s 91(12)(b).

20 Environmental Protection Act 1990 s 91(12).

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730. Summary proceedings by litter authorities.

Where a principal litter authority¹ other than an English county council or a joint board² is satisfied as respects:

- 1755 (1) any relevant Crown land³;
- 1756 (2) any relevant land of a designated statutory undertaker⁴; or
- 1757 (3) any relevant land of a designated educational institution⁵,

that it is defaced by litter or refuse or that defacement of it by litter or refuse is likely to recur, the authority must serve a notice (a 'litter abatement notice') imposing either or both of the following⁶:

- 1758 (a) a requirement that the litter or refuse be cleared within a time specified in the notice⁷;
- 1759 (b) a prohibition on permitting the land to become defaced by litter or refuse⁸.

The litter abatement notice must be served:

- 1760 (i) as respects relevant Crown land, on the appropriate Crown authority⁹;
- 1761 (ii) as respects relevant land of a designated statutory undertaker, on the undertaker¹⁰;
- 1762 (iii) as respects relevant land of a designated educational institution, on the governing body of the institution¹¹.

The person served with the notice may appeal against the notice to a magistrates' court by way of summary application within the period of 21 days beginning with the date on which the notice was served¹². If a person on whom a litter abatement notice is served, without reasonable excuse, fails to comply with or contravenes the requirement or prohibition imposed by the notice, he is guilty of an offence¹³. A code of practice¹⁴ is admissible in evidence in any proceedings under these provisions and if any provision of such a code appears to the court to be relevant to any question in the proceedings it must be taken into account in determining that question¹⁵.

If a person on whom a litter abatement notice is served fails to comply with the requirement imposed by the notice in respect of any land¹⁶, the authority may:

- 1763 (A) enter on the land and clear the litter or refuse¹⁷; and
- 1764 (B) recover from that person the expenditure attributable to its having done so, except such of the expenditure as that person shows was unnecessary in the circumstances¹⁸.

1 As to principal litter authorities see PARA 722 note 2.

2 Environmental Protection Act 1990 s 92(1) (amended by the Local Government (Wales) Act 1994 Sch 9 para 17(9)(b)). See also PARA 733.

3 Environmental Protection Act 1990 s 92(1)(a). As to the meaning of 'relevant Crown land' see PARA 723 note 9.

4 Environmental Protection Act 1990 s 92(1)(b) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 7). As to the meanings of 'statutory undertaker' and 'relevant land' of a designated statutory undertaker see PARA 723 note 11.

5 Environmental Protection Act 1990 s 92(1)(c). As to the meanings of 'educational institution' and 'relevant land' of a designated educational institution see PARA 723 note 13.

6 See the Environmental Protection Act 1990 s 92(1) (as amended: see note 2).

7 Environmental Protection Act 1990 s 92(2)(a).

8 Environmental Protection Act 1990 s 92(2)(b). Certain functions under s 92 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

As to graffiti and fly-posting see the Anti-social Behaviour Act 2003 ss 43-52; and PARAS 735-736.

9 Environmental Protection Act 1990 s 92(3)(a). As to the meaning of 'appropriate Crown authority' see PARA 723 note 8.

10 Environmental Protection Act 1990 s 92(3)(b).

11 Environmental Protection Act 1990 s 92(3)(c).

12 Environmental Protection Act 1990 s 92(4). If, on any appeal under s 92(4), the appellant proves that, as respects the land in question, he has complied with his duty under s 89(1) (see PARA 723), the court must allow the appeal: s 92(5).

13 Environmental Protection Act 1990 s 92(6). A person guilty of an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction: s 92(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

In any proceedings for an offence under s 92(6), it is a defence for the person charged to prove that he has complied, as respects the land in question, with his duty under s 89(1) (see PARA 723): s 92(7).

14 Ie under the Environmental Protection Act 1990 s 89(7): see PARA 723.

15 Environmental Protection Act 1990 s 92(8).

16 This provision does not, however, apply in relation to any land to which the Environmental Protection Act 1990 s 92(11) or s 92(12) applies: s 92(10) (s 92(10) substituted, and s 92(11), (12) added, by the Anti-social Behaviour Act 2003 s 56(1)). This provision applies to any relevant Crown land which is occupied for naval, military or air force purposes: Environmental Protection Act 1990 s 92(11) (as so added). This provision applies to any relevant land of a statutory undertaker in relation to which the Secretary of State has specified by order that it is requisite or expedient that, in the national interest, s 92(9) should not apply: s 92(12) (as so added). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

17 Environmental Protection Act 1990 s 92(9)(a). As to exclusion of liability in regard to s 92(9) see s 97B; and PARA 734.

18 Environmental Protection Act 1990 s 92(9)(b). See note 17.

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731. Public registers.

It is the duty of each principal litter authority other than an English county council or a joint board¹ to maintain, in accordance with the following provisions, a register containing copies² of: (1) all street litter control notices issued³; and (2) all orders made by the authority⁴.

Copies of the orders and notices required to be kept in the register must be so kept for so long as the order or notice is in force⁵.

It is the duty of each authority maintaining a register under these provisions:

1765 (a) to secure that the register is available, at all reasonable times, for inspection by the public free of charge⁶; and

1766 (b) to afford to members of the public facilities for obtaining copies of the documents kept in the register, on payment of reasonable charges⁷.

A register under these provisions need not be kept in documentary form⁸.

1 As to principal litter authorities see PARA 722 note 2.

2 Environmental Protection Act 1990 s 95(1) (s 95(1) amended by the Local Government (Wales) Act 1994 Sch 9 para 17(9)(c)).

3 Environmental Protection Act 1990 s 95(1)(b). The notices referred to in the text are those issued under s 93(1): see PARA 727. As to the meaning of 'street litter control notices' see PARA 727.

Where the requirements of a street litter control notice are varied or added to on an appeal under the Environmental Protection Act 1990 s 94(7) (see PARA 727), a copy of the order making the variation or addition must be included in the register: s 95(2).

4 Environmental Protection Act 1990 s 95(1)(c) (added by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 8). The orders referred to in the text are those made under Sch 3A para 2(1): see PARA 728.

5 Environmental Protection Act 1990 s 95(3).

6 Environmental Protection Act 1990 s 95(4)(a).

7 Environmental Protection Act 1990 s 95(4)(b).

8 Environmental Protection Act 1990 s 95(5).

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732. Application of certain provisions relating to waste.

In relation to litter and refuse collected by certain bodies¹, the Secretary of State² may make regulations providing that prescribed provisions of Part II of the Environmental Protection Act 1990³ are to have effect, with such modifications (if any) as may be prescribed⁴:

1767 (1) as if references to controlled waste⁵ or controlled waste of a prescribed description included references to such litter and refuse or any description of such litter and refuse⁶;

1768 (2) as if references to controlled waste or controlled waste of a prescribed description collected under the provisions relating to waste⁷ included references to litter and refuse collected as mentioned above⁸ or any description of such litter and refuse⁹.

The powers conferred by these provisions are exercisable in relation to litter and refuse to which they apply whether or not the circumstances are such that the litter or refuse would be treated as controlled waste apart from these provisions¹⁰.

1 le litter and refuse collected: (1) by any authority or person in pursuance of the Environmental Protection Act 1990 s 89(1) (see PARA 723); (2) by a principal litter authority in pursuance of s 92(9) (see PARA 730) or s 92C(3) (see PARA 726); or (3) by any person in pursuance of s 93 (see PARA 727): s 96(1) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 2, 9). As to principal litter authorities see PARA 722 note 2.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 le the Environmental Protection Act 1990 Pt II (ss 29-78).

4 Environmental Protection Act 1990 s 96(2).

5 As to the meaning of 'controlled waste' see PARA 624.

6 Environmental Protection Act 1990 s 96(2)(a).

7 le collected under the Environmental Protection Act 1990 s 45: see PARA 693.

8 le collected as mentioned in the Environmental Protection Act 1990 s 96(1): see the text and note 1.

9 Environmental Protection Act 1990 s 96(2)(b). As to the regulations made see the Controlled Waste Regulations 1992, SI 1992/588; and PARA 624.

10 Environmental Protection Act 1990 s 96(3). Section 96 does not affect the interpretation of the expressions defined in s 75 (see PARAS 623-624): s 96(3).

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733. General matters relating to fixed penalties.

The appropriate person¹ may by regulations² make provision in connection with the powers conferred under certain provisions of the Environmental Protection Act 1990³ relating to fixed penalty notices⁴.

Such regulations may, in particular: (1) require the amount of the fixed penalty specified under the provisions⁵ to fall within a range prescribed in the regulations⁶; (2) restrict the extent to which, and the circumstances in which, a principal litter authority⁷ may make provision⁸ for treating the penalty as being paid⁹.

The appropriate person may also by order substitute a different amount for the amount for the time being specified¹⁰ as the penalty¹¹.

1 As to the meaning of 'appropriate person' see PARA 722 note 2.

2 Regulations or an order under the Environmental Protection Act 1990 s 97A may make different provision for different purposes: s 97A(4) (s 97A added by the Clean Neighbourhoods and Environment Act 2005 s 24).

As to the regulations made under the Environmental Protection Act 1990 s 97A(1), (2), (4) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175. See also the Environmental Offences (Use of Fixed Penalty Receipts) (Wales) Regulations 2007, SI 2007/739 (amended by SI 2008/663); and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663.

3 The provisions referred to in the text are: the Environmental Protection Act 1990 s 88(6A)(a), (7) (see PARA 722); s 94A(4)(a), (5) (see PARA 726); and Sch 3A para 7(4)(a), (5) (see PARA 728).

4 Environmental Protection Act 1990 s 97A(1) (as added: see note 2). See note 2.

5 The provisions referred to in the text are: the Environmental Protection Act 1990 s 88(6A)(a) (see PARA 722); s 94A(4)(a) (see PARA 726); or Sch 3A para 7(4)(a) (see PARA 728).

6 Environmental Protection Act 1990 s 97A(2)(a) (as added: see note 2). See note 2.

7 As to the meaning of 'litter authority', and as to principal litter authorities, see PARA 722 note 2.

8 Ie under the Environmental Protection Act 1990 s 88(7) (see PARA 722); s 94A(5) (see PARA 726); or Sch 3A para 7(5) (see PARA 728).

9 Environmental Protection Act 1990 s 97A(2)(b) (as added: see note 2). See note 2.

10 Ie under the Environmental Protection Act 1990 s 88(6A)(b) (see PARA 722); s 94A(4)(b) (see PARA 726); or Sch 3A para 7(4)(b) (see PARA 728).

11 Environmental Protection Act 1990 s 97A(3) (as added: see note 2).

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734. Exclusion of liability.

The principal litter authority¹ and any employee of the authority (and, in certain cases², any person authorised³ by the authority and the employer or any employee of that person⁴) are not liable to an occupier or owner of land for damages or otherwise (whether at common law or otherwise) arising out of anything done or omitted to be done in the exercise or purported exercise of certain powers relating to litter abatement notices and litter clearing notices⁵.

This provision⁶ does not apply: (1) if the act or omission is shown to be in bad faith⁷; (2) to liability arising out of a failure to exercise due care and attention⁸; (3) so as to prevent an award of damages in respect of an act or omission on the ground that the act or omission was unlawful by virtue of the Human Rights Act 1998⁹.

1 As to principal litter authorities see PARA 722 note 2.

2 Ie in the case of the power under the Environmental Protection Act 1990 s 92C(3): see PARA 726.

3 Ie authorised by the Environmental Protection Act 1990 s 92C(3): see PARA 726.

4 Environmental Protection Act 1990 s 97B(2) (s 97B added by the Clean Neighbourhoods and Environment Act 2005 s 25).

5 Environmental Protection Act 1990 s 97B(1) (as added: see note 4). The powers referred to in the text are those in the following provisions: s 92(9) (see PARA 730); s 92A(9) (see PARA 726); or s 92C(3) (see PARA 726).

Section 97B does not affect any other exemption from liability (whether at common law or otherwise): s 97B(4) (as so added).

6 Ie the Environmental Protection Act 1990 s 97B(1): see the text and note 5.

7 Environmental Protection Act 1990 s 97B(3)(a) (as added: see note 4).

8 Environmental Protection Act 1990 s 97B(3)(b) (as added: see note 4).

9 Environmental Protection Act 1990 s 97B(3)(c) (as added: see note 4). The relevant provision of the Human Rights Act 1998 is s 6(1): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

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(2) GRAFFITI AND OTHER DEFACEMENT

735. Penalty notices for graffiti and fly-posting.

Where an authorised officer¹ of a local authority² has reason to believe that a person has committed a relevant offence in the area of that authority, he may give that person a notice (a 'penalty notice') offering him the opportunity of discharging any liability to conviction for that offence by payment of a penalty³ in accordance with the penalty notice⁴. A 'relevant offence' is: (1) an offence of unlawfully affixing a poster on a building etc in London⁵; (2) an offence of defacement of streets with slogans etc⁶; (3) an offence of damaging or destroying property⁷ which involves only the painting or writing on, or the soiling, marking or other defacing of, any property by whatever means⁸; (4) an offence of obliterating a traffic sign etc⁹; (5) an offence of painting or affixing things on or structures on a highway¹⁰; (6) an offence of displaying an advertisement in contravention of regulations¹¹. An authorised officer may not give a penalty notice if he considers that the commission of the offence, in the case of a relevant offence falling within head (3) above also involves racially or religiously aggravated criminal damage¹² or, in the case of any other relevant offence, was motivated, wholly or partly, by hostility towards a person based on his membership¹³, or presumed membership¹⁴, of a racial or religious group¹⁵, or towards members of a racial or religious group based on their membership of that group¹⁶. In the case of a relevant offence falling within head (6) above, an authorised officer may not give a penalty notice to a person in relation to the display of an advertisement¹⁷ unless he has reason to believe that that person personally affixed or placed the advertisement to, against or on the land¹⁸ or object on which the advertisement is or was displayed¹⁹. Where a person is given a penalty notice in respect of an offence, no proceedings may be instituted for that offence, or any other relevant offence arising out of the same circumstances, before the expiration of the period of 14 days following the date of the penalty notice, and he may not be convicted of that offence, or any other relevant offence arising out of the same circumstances, if before the expiration of that period he pays the penalty in accordance with the penalty notice²⁰.

A penalty notice must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence²¹, and must state the period during which proceedings will not be instituted²² for the offence, the amount of the penalty and the person to whom and the address at which the penalty may be paid²³. A penalty notice must be in such form as the appropriate person may by order prescribe²⁴.

The fixed penalty payable in pursuance of a penalty notice²⁵ is payable to the local authority whose authorised officer gave the notice²⁶.

1 'Authorised officer', in relation to a local authority, means: (1) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under the Anti-social Behaviour Act 2003 s 43(1) (see the text and note 4); (2) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function; and (3) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices: s 47(1) (definition substituted by the Clean Neighbourhoods and Environment Act 2005 s 30(1)).

2 'Local authority' means an authority in England and Wales which is a litter authority for the purposes of the Environmental Protection Act 1990 s 88 (see PARA 722): Anti-social Behaviour Act 2003 s 47(1).

3 The amount of a penalty payable in pursuance of a notice under the Anti-social Behaviour Act 2003 s 43(1) (see the text and note 4) is: (1) the amount specified by a relevant local authority in relation to its area (whether or not the penalty is payable to that or another authority); or (2) if no amount is so specified, £75: s 43A(1) (s 43A added by the Clean Neighbourhoods and Environment Act 2005 s 28).

For these above purposes, 'relevant local authority' in head (1) above means: (a) a district council in England; (b) a county council in England for an area for which there is no district council; (c) a London borough council; (d) the Common Council of the City of London; (e) the Council of the Isles of Scilly; (f) a county or county borough council in Wales: Anti-social Behaviour Act 2003 s 43A(2) (as so added). See **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; **LONDON GOVERNMENT**.

The local authority to which a penalty is payable in pursuance of a notice under s 43(1) (see the text and note 4) may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority: s 43A(3) (as so added).

The appropriate person may by regulations make provision in connection with the powers conferred under s 43A(1)(a) (see head (1) above) and s 43A(3): s 43A(4) (as so added). Regulations under s 43A(4) may, in particular: (i) require an amount specified under head (1) above to fall within a range prescribed in the regulations; (ii) restrict the extent to which, and the circumstances in which, a local authority can make provision under s 43A(3): s 43A(5) (as so added). The appropriate person may by order substitute a different amount for the amount for the time being specified in head (1) above: s 43A(6) (as so added). The 'appropriate person' means, in relation to England, the Secretary of State (see PARA 58) and, in relation to Wales, the Welsh Ministers (see PARA 59): s 47(1).

If an authorised officer of a local authority proposes to give a person a notice under s 43(1), the officer may require the person to give him his name and address: s 43B(1) (s 43B added by the Clean Neighbourhoods and Environment Act 2005 s 29). A person commits an offence if: (A) he fails to give his name and address when required to do so under the Anti-social Behaviour Act 2003 s 43B(1); or (B) he gives a false or inaccurate name or address in response to that requirement: s 43B(2) (as so added). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 43B(3) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

4 Anti-social Behaviour Act 2003 s 43(1). Certain functions under s 43 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

The appropriate person may issue guidance about the exercise of the discretion to give penalty notices, and about the giving of penalty notices: Anti-social Behaviour Act 2003 s 47(3).

The appropriate person may by regulations prescribe conditions to be satisfied by a person before a parish or community council may authorise him in writing for the purpose of giving notices under s 43(1): s 47(4) (added by the Clean Neighbourhoods and Environment Act 2005 s 30(2)). As to regulations under the Anti-social Behaviour Act 2003 s 47(4) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175. See also the Environmental Offences (Use of Fixed Penalty Receipts) (Wales) Regulations 2007, SI 2007/739 (amended by SI 2008/663); and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663.

5 Ie under the Metropolitan Police Act 1839 s 54(10) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 843): Anti-social Behaviour Act 2003 s 44(1)(a).

6 Ie under the London County Council (General Powers) Act 1954 s 20(1) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 848): Anti-social Behaviour Act 2003 s 44(1)(b).

7 Ie under the Criminal Damage Act 1971 s 1(1): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334.

8 Anti-social Behaviour Act 2003 s 44(1)(c). As to the provision making it an offence to sell aerosol paint to children and the enforcement of that provision see ss 54, 54A; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 617; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 338.

9 Ie an offence under the Highways Act 1980 s 131(2) which involves only an act of obliteration (including that provision as applied by the Countryside Act 1968 s 27(6)) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 345, 931): Anti-social Behaviour Act 2003 s 44(1)(d).

10 Ie under the Highways Act 1980 s 132(1) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 380): Anti-social Behaviour Act 2003 s 44(1)(e).

11 Ie under the Town and Country Planning Act 1990 s 224(3) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 830): Anti-social Behaviour Act 2003 s 44(1)(f).

12 Ie under the Crime and Disorder Act 1998 s 30: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334.

13 'Membership', in relation to a racial or religious group, includes association with members of that group: Crime and Disorder Act 1998 s 28(2); applied by the Anti-social Behaviour Act 2003 s 47(2).

14 'Presumed' means presumed by the offender: Crime and Disorder Act 1998 s 28(2); applied by the Anti-social Behaviour Act 2003 s 47(2).

15 'Racial group' and 'religious group' have the meanings given by the Crime and Disorder Act 1998 s 28(4), (5) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 154): Anti-social Behaviour Act 2003 s 47(1).

16 Anti-social Behaviour Act 2003 s 43(2).

17 'Advertisement' has the meaning given by the Town and Country Planning Act 1990 s 336(1) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 770): Anti-social Behaviour Act 2003 s 47(1).

18 'Land' has the meaning given by the Town and Country Planning Act 1990 s 336(1) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 2): Anti-social Behaviour Act 2003 s 47(1).

19 Anti-social Behaviour Act 2003 s 43(3).

20 Anti-social Behaviour Act 2003 s 43(4).

21 Anti-social Behaviour Act 2003 s 43(5).

22 Ie by virtue of the Anti-social Behaviour Act 2003 s 43(4).

23 Anti-social Behaviour Act 2003 s 43(6). Without prejudice to payment by any other method, payment of a penalty in pursuance of a notice under s 43(1) (see the text and note 4) may be made by pre-paying and posting a letter containing the amount of the penalty, in cash or otherwise, to the person mentioned under s 46(5) as the person to whom the penalty may be paid at the address so mentioned: s 43(7). Where a letter is sent in accordance with s 43(7), payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post: s 43(8).

24 Anti-social Behaviour Act 2003 s 43(9).

25 Ie a notice under the Anti-social Behaviour Act 2003 s 43(1).

26 Anti-social Behaviour Act 2003 s 45(1) (substituted by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 12, 14).

In any proceedings a certificate which purports to be signed by or on behalf of the person responsible for the financial affairs of a local authority, and states that payment of a penalty payable in pursuance of a penalty notice was or was not received by a date specified in the certificate, is evidence of the facts stated: Anti-social Behaviour Act 2003 s 45(2).

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736. Defacement removal notices.

Where a local authority¹ is satisfied that a relevant surface² in an area has been defaced by graffiti³ or any poster or flyer the display of which contravenes regulations under the Town and Country Planning Act 1990, and that the defacement is detrimental to the amenity of the area or is offensive⁴, it may serve a notice⁵ (a 'defacement removal notice') on any person who is responsible for the surface⁶ imposing a requirement that the defacement be removed, cleared or otherwise remedied within a period specified in the notice being not less than 28 days beginning with the day on which the notice is served⁷. Where that requirement is not complied with, the authority or any person authorised by the authority may remove, clear or otherwise remedy the defacement⁸, and may enter any land to the extent reasonably necessary for that purpose⁹.

A local authority may recover from the person on whom a defacement removal notice was served expenditure reasonably incurred in removing, clearing or otherwise remedying the defacement¹⁰. However, a local authority may not so recover expenditure unless it has served on the person in question a notice¹¹ which sets out the amount of, and details of, the expenditure which it proposes to recover¹².

The Secretary of State and the Welsh Ministers must issue guidance to local authorities in relation to defacement removal notices and the recovery of expenditure¹³, and local authorities must have regard to any such guidance¹⁴.

A person on whom a defacement removal notice is served may, within the period of 21 days beginning with the day on which it is served, appeal against the notice to a magistrates' court on any of the following grounds¹⁵: (1) the defacement is neither detrimental to the amenity of the area nor offensive; (2) there is a material defect or error in, or in connection with, the notice; (3) that the notice should be served on another person¹⁶. Where a person so appeals against the defacement removal notice, it is of no effect pending the final determination or withdrawal of the appeal¹⁷. On the determination of such an appeal, the court must either quash or modify the notice, or dismiss the appeal¹⁸. Further, a person on whom a defacement removal notice is served may, within the period of 21 days beginning with the day on which it is served, appeal to a magistrates' court on the grounds that the expenditure which the authority is proposing to recover is excessive¹⁹. On the determination of such an appeal, the court must either confirm that the amount which the authority is proposing to recover is reasonable or substitute a lower amount as the amount which the authority is entitled to recover²⁰.

Specified persons are exempt from liability to any person responsible for the relevant surface for damages or otherwise, whether at common law or otherwise, arising out of anything done or omitted to be done in the exercise or purported exercise of the power to remove, clear or otherwise remedy the defacement²¹, or the power to affix a defacement removal notice to a relevant surface²². In relation to the power to remove, clear or otherwise remedy the defacement, those persons are: (a) the local authority and any employee of the authority; (b) any person authorised by the authority to remove, clear or otherwise remedy the defacement and the employer or any employee of that person²³. In relation to the power to affix a defacement removal notice to a relevant surface, those persons are: the local authority and any employee of the authority²⁴. However, the exemption from liability does not apply: (i) if the act or omission is shown to have been in bad faith²⁵; (ii) to liability arising out of a failure to exercise due care and attention²⁶; (iii) so as to prevent an award of damages made in respect of

an act or omission on the ground that the act or omission amounts was unlawful by virtue of the Human Rights Act 1998²⁷.

1 'Local authority' means an authority in England and Wales which is a litter authority for the purposes of the Environmental Protection Act 1990 s 88 (see PARA 722) but not a parish or community council: Anti-social Behaviour Act 2003 s 48(12) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 12, 17(1), (7)).

2 'Relevant surface' is any of the following surfaces, whether internal or external or open to the air or not: (1) the surface of any street or of any building, structure, apparatus, plant or other object in or on any street; (2) the surface of any land owned, occupied or controlled by a statutory undertaker or of any building, structure, apparatus, plant or other object in or on any such land; (3) the surface of any land owned, occupied or controlled by an educational institution, including its governing body, or of any building, structure, apparatus, plant or other object in or on any such land: Anti-social Behaviour Act 2003 s 48(9). 'Street' has the meaning given by the New Roads and Street Works Act 1991 s 48(1) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 9); 'statutory undertaker' has the meaning given by the Environmental Protection Act 1990 s 98(6) (see PARA 723 note 10); and 'educational institution' has the meaning given by the Environmental Protection Act 1990 s 98(2) (see PARA 723 note 12): s 48(12). However, a surface is not a relevant surface unless: (a) in the case of a surface within head (1) above, the street is public land; (b) in the case of a surface within head (2) or head (3) above, the land is public land, the surface is visible from public land, or the surface is otherwise visible to members of the public using the services or facilities of the statutory undertaker or educational institution in question or any other statutory undertaker or educational institution: s 48(10). 'Public land' means land to which the public are entitled or permitted to have access with or without payment, including any street to which the public are so entitled or permitted: s 48(12).

3 'Graffiti' includes painting, writing, soiling, marking or other defacing by whatever means: Anti-social Behaviour Act 2003 s 48(12).

4 Anti-social Behaviour Act 2003 s 48(1) (amended by the Clean Neighbourhoods and Environment Act 2005 s 31). The reference in the text is a reference to regulations under the Town and Country Planning Act 1990 s 220: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 769.

5 The Environmental Protection Act 1990 s 160 has effect in relation to defacement removal notices as if they were notices within s 160(2) (see PARA 147): Anti-social Behaviour Act 2003 s 48(7) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 12, 17(1), (4)). Where after reasonable inquiry a local authority is unable to ascertain the name or proper address of any person who is responsible for a relevant surface, it may affix a defacement removal notice to the surface and enter any land to the extent reasonably necessary for that purpose, and that notice is to be treated as having been served on a person responsible for the surface: Anti-social Behaviour Act 2003 s 48(8) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 12, 17(1), (5)). 'Proper address' is to be read in accordance with the Environmental Protection Act 1990 s 160(4) and (5) (see PARA 147): Anti-social Behaviour Act 2003 s 48(12).

6 A person is responsible for a relevant surface if: (1) where it is the surface of any land, including a street, he owns, leases, occupies, controls, operates or maintains the land; and (2) where it is the surface of any other thing mentioned in the Anti-social Behaviour Act 2003 s 48(9) (see note 2), he owns, leases, occupies, controls, operates or maintains the thing: s 48(11).

7 Anti-social Behaviour Act 2003 s 48(2), (3), (12) (s 48(2), (6) amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 12, 17(1), (3)). A defacement removal notice must explain the effect of the Anti-social Behaviour Act 2003 ss 48(4), (5), 49, 51 (see the text and notes 15-20): s 48(6) (as so amended). Certain functions under s 48 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

8 Anti-social Behaviour Act 2003 s 48(4).

9 Anti-social Behaviour Act 2003 s 48(5).

10 Anti-social Behaviour Act 2003 s 49(1) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 12, 18). The reference in the text is a reference to expenditure reasonably incurred under the Anti-social Behaviour Act 2003 s 48(4): see the text and note 8.

11 The Environmental Protection Act 1990 s 160 has effect in relation to such notices as if they were notices within s 160(2) (see PARA 147): Anti-social Behaviour Act 2003 s 49(3).

12 Anti-social Behaviour Act 2003 s 49(2).

13 Ie for the purposes of the Anti-social Behaviour Act 2003 s 48, 49: s 50(1), (2).

14 Anti-social Behaviour Act 2003 s 50(3).

15 Anti-social Behaviour Act 2003 s 51(1) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 12, 18).

16 Anti-social Behaviour Act 2003 s 51(2).

17 Anti-social Behaviour Act 2003 s 51(3) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 4 paras 12, 18).

18 Anti-social Behaviour Act 2003 s 51(4). Where the court modifies the notice or dismisses the appeal, it may extend the period specified in the notice: s 51(5).

19 Anti-social Behaviour Act 2003 s 51(6).

20 Anti-social Behaviour Act 2003 s 51(7).

21 Is the power under the Anti-social Behaviour Act 2003 s 48(4) (see the text and note 8): s 52(1)(a).

22 Is the power under the Anti-social Behaviour Act 2003 s 48(8) (see note 5): s 52(1)(b).

23 Anti-social Behaviour Act 2003 s 52(2)(a).

24 Anti-social Behaviour Act 2003 s 52(2)(b).

25 Anti-social Behaviour Act 2003 s 52(3)(a).

26 Anti-social Behaviour Act 2003 s 52(3)(b).

27 Anti-social Behaviour Act 2003 s 52(3)(c). The relevant provision of the Human Rights Act 1998 is s 6(1): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

The Anti-social Behaviour Act 2003 s 52 does not affect any other exemption from liability, whether at common law or otherwise: s 52(4).

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(3) ABANDONED TROLLEYS

737. Powers in relation to abandoned shopping and luggage trolleys.

The Environmental Protection Act 1990 contains provisions relating to abandoned shopping and luggage trolleys¹. A local authority² may resolve that those provisions are to apply in its area; and if a local authority does so resolve, those provisions will come into force in its area on the day specified in the resolution, which may not be before the expiration of the period of three months beginning with the day on which the resolution is passed³. A local authority must publish in at least one newspaper circulating in its area a notice that the authority has passed such a resolution and indicating the general effect of those provisions⁴. It is the duty of a local authority, before making any such resolution, to consult with the persons or representatives of persons who appear to the authority to be persons who will be affected by the application of those provisions⁵. It is also the duty of a local authority from time to time to consult about the operation of those provisions with the persons or representatives of persons who appear to be affected by their operation⁶.

1 See the Environmental Protection Act 1990 s 99, Sch 4. Schedule 4 applies where any shopping or luggage trolley is found by an authorised officer of the local authority (see note 2) on any land in the open air and appears to him to be abandoned: Sch 4 para 1(1). Schedule 4 does not, however, apply in relation to a shopping or luggage trolley found on the following descriptions of land, that is to say:

- 81 (1) land in which the owner of the trolley has a legal estate (Sch 4 para 1(2)(a));
- 82 (2) where an off-street parking place affords facilities to the customers of shops for leaving shopping trolleys used by them, land on which those facilities are afforded (Sch 4 para 1(2)(b));
- 83 (3) where any other place designated by the local authority for these purposes affords like facilities, land on which those facilities are afforded (Sch 4 para 1(2)(c)); and
- 84 (4) as respects luggage trolleys, land which is used for the purposes of their undertaking by persons authorised by an enactment to carry on any railway, light railway, tramway or road transport undertaking, by an operator of railway services (within the meaning of the Railways Act 1993 Pt I (ss 3-83)) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 33) provided in connection with a transferred network, or by a relevant airport operator (within the meaning of the Airports Act 1986 Pt V (ss 57-62)) (see **AIR LAW** vol 2 (2008) PARA 189) (Environmental Protection Act 1990 Sch 4 para 1(2)(d) (amended by SI 1999/1443)).

In the Environmental Protection Act 1990 Sch 4, 'shopping trolley' means a trolley provided by the owner of a shop to customers for use by them for carrying goods purchased at the shop, not being a trolley which is power-assisted: Sch 4 para 5. 'Luggage trolley' means a trolley provided by a person carrying on an undertaking mentioned in head (4) above to travellers for use by them for carrying their luggage to, from or within the premises used for the purposes of his undertaking, not being a trolley which is power-assisted: Sch 4 para 5.

2 For these purposes, 'local authority' means: (1) the council of a district; (2) the council of a London borough; (3) the Common Council of the City of London; (4) the council of the Isles of Scilly; (5) in Wales, the council of a county or county borough: Environmental Protection Act 1990 s 99(5) (amended by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 17(11)). In the Environmental Protection Act 1990 Sch 4, 'local authority' means any local authority which has resolved that that Schedule is to apply in its area: s 99(6). As to local government areas and authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

3 Environmental Protection Act 1990 s 99(1).

- 4 Environmental Protection Act 1990 s 99(2).
- 5 Environmental Protection Act 1990 s 99(3).
- 6 Environmental Protection Act 1990 s 99(4).

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738. Power to seize and remove trolleys.

Where the provisions relating to abandoned shopping and luggage trolleys¹ apply in relation to a shopping or luggage trolley, the local authority² may: (1) seize the trolley³; and (2) remove it to such place under its control as the authority thinks fit⁴.

When a shopping or luggage trolley is found on any land appearing to the authorised officer to be occupied by any person, the trolley must not be removed without the consent of that person unless:

- 1769 (a) the local authority has served on that person a notice stating that the authority proposes to remove the trolley⁵; and
- 1770 (b) no notice objecting to its removal is served by that person on the local authority within the period of 14 days beginning with the day on which the local authority served the notice of the proposed removal on him⁶.

1 See the Environmental Protection Act 1990 s 99, Sch 4. As to where these provisions apply see PARA 737 note 1. As to the meanings of 'shopping trolley' and 'luggage trolley' see PARA 737 note 1.

2 As to the meaning of 'local authority' see PARA 737 note 2.

3 Environmental Protection Act 1990 Sch 4 para 2(1)(a).

4 Environmental Protection Act 1990 Sch 4 para 2(1)(b).

5 Environmental Protection Act 1990 Sch 4 para 2(2)(a).

6 Environmental Protection Act 1990 Sch 4 para 2(2)(b).

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739. Retention, return and disposal of trolleys.

The local authority¹, as respects any shopping or luggage trolley it has seized and removed²:

- 1771 (1) must keep the trolley for a period of six weeks³; and
- 1772 (2) may sell or otherwise dispose of the trolley at any time after the end of that period⁴.

The local authority must, as respects any trolley it has seized and removed, as soon as reasonably practicable (but not later than 14 days) after its removal, serve on the person (if any) who appears to the authority to be the owner of the trolley a notice stating⁵:

- 1773 (a) that the authority has removed the trolley and is keeping it⁶;
- 1774 (b) the place where it is being kept⁷; and
- 1775 (c) that, if it is not claimed, the authority may dispose of it⁸.

If, within the period mentioned in head (1) above, any person claims to be the owner of a shopping or luggage trolley being kept by the authority under that head, the local authority must, if it appears that the claimant is the owner, deliver the trolley to him⁹. A person claiming to be the owner of a shopping or luggage trolley is not entitled to have the trolley delivered to him unless he pays the local authority, on demand, such charge as the authority requires¹⁰. No shopping or luggage trolley may be disposed of by the local authority unless (where it has not been claimed) the authority has made reasonable inquiries to ascertain who owns it¹¹.

1 As to the meaning of 'local authority' for these purposes see PARA 737 note 2.

2 As to the power to seize and remove trolleys see PARA 738. As to the meanings of 'shopping trolley' and 'luggage trolley' see PARA 737 note 1.

3 Environmental Protection Act 1990 s 99, Sch 4 para 3(1)(a).

4 Environmental Protection Act 1990 Sch 4 para 3(1)(b).

Where the local authority is entitled to sell or otherwise dispose of a shopping or luggage trolley in accordance with Sch 4 para 3(1)(b), if it appears to the authority that a particular person is the owner of the trolley, the authority may charge him a sum in respect of the removal, storage and disposal of the trolley: Sch 4 para 3A(1), (2) (Sch 4 para 3A added by the Clean Neighbourhoods and Environment Act 2005 s 99(1), (3)). The charge is payable to the authority on demand: Environmental Protection Act 1990 Sch 4 para 3A(3) (as so added). The sum payable as a charge under Sch 4 para 3A is recoverable by the authority as a debt due to it: Sch 4 para 3A(4) (as so added). In proceedings against a person under Sch 4 para 3A(4) for enforcement of a charge, it is a defence for the person to prove that he was not the owner of the trolley to which the charge relates at the time it was removed: Sch 4 para 3A(5) (as so added).

As to transitional provisions, where a local authority before the commencement date of the Clean Neighbourhoods and Environment Act 2005 s 99 has resolved under the Environmental Protection Act 1990 s 99 (see PARA 737) that Sch 4 is to apply in its area, see the Clean Neighbourhoods and Environment Act 2005 s 100.

5 Environmental Protection Act 1990 Sch 4 para 3(2) (amended by the Clean Neighbourhoods and Environment Act 2005 s 99(1), (2)). See note 4.

6 Environmental Protection Act 1990 Sch 4 para 3(2)(a).

- 7 Environmental Protection Act 1990 Sch 4 para 3(2)(b).
- 8 Environmental Protection Act 1990 Sch 4 para 3(2)(c).
- 9 Environmental Protection Act 1990 Sch 4 para 3(3).
- 10 Environmental Protection Act 1990 Sch 4 para 3(4). As to charges see [PARA 740](#).
- 11 Environmental Protection Act 1990 Sch 4 para 3(5).

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740. Charges.

The local authority¹, in fixing the charges to be paid², must secure that the charges so payable are such as are sufficient, taking one financial year with another, to cover the cost of removing, storing and disposing of shopping or luggage trolleys³. The local authority may agree with persons who own shopping or luggage trolleys and make them available for use in its area a scheme for the collection by them of trolleys they make available for use; and where such an agreement is in force with any person, no charge may be demanded⁴ by the local authority in respect of any trolley within the scheme in relation to which the provisions of the scheme are complied with⁵.

1 As to the meaning of 'local authority' see PARA 737 note 2.

2 Ie under the Environmental Protection Act 1990 s 99, Sch 4: see PARA 739.

3 Environmental Protection Act 1990 Sch 4 para 4(1) (amended by the Clean Neighbourhoods and Environment Act 2005 s 99(1), (4)(a)). As to transitional provisions see PARA 739 note 4. As to the meanings of 'shopping trolley' and 'luggage trolley' see PARA 737 note 1.

4 Ie under the Environmental Protection Act 1990 Sch 4 para 3 or Sch 4 para 3A: see PARA 739.

5 Environmental Protection Act 1990 Sch 4 para 4(2) (amended by the Clean Neighbourhoods and Environment Act 2005 s 99(1), (4)(b)).

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(4) CONTROL OF DUMPING OF VEHICLES AND OTHER REFUSE

741. Provision by local authorities for disposal of refuse.

Under the Refuse Disposal (Amenity) Act 1978¹, it is the duty of a local authority² to provide places where refuse³, other than refuse falling to be disposed of in the course of a business, may be deposited at all reasonable times free of charge by persons resident in the area of the authority and, on payment of such charges (if any) as the authority thinks fit, by other persons⁴. Any place provided by a local authority in pursuance of these provisions must either be situated within the area of the authority or, if not so situated, be reasonably accessible to persons resident in that area; and a local authority may if it thinks fit determine that any such place is to be available for the deposit of refuse of such descriptions only as are specified in the determination⁵.

A local authority may: (1) permit, on such terms as it thinks fit, the deposit at a place provided by it in pursuance of these provisions of refuse falling to be disposed of in the course of a business⁶; (2) provide plant and apparatus for the treatment or disposal of refuse deposited at such a place⁷; and (3) sell or otherwise dispose of any such refuse⁸.

The power of a local authority to provide places, plant and apparatus and to accept and dispose of refuse in pursuance of these provisions includes power to enter into an agreement with any other person for the provision of facilities by him for the purposes of these provisions at any place under his control⁹.

No action lies against a local authority in respect of damage resulting from its failure to carry out its duty under these provisions¹⁰; but if the Secretary of State is satisfied, after holding a local inquiry, that a local authority has failed to carry out that duty he may by order require the authority to take such steps for carrying it out as are specified in the order¹¹.

1 le under the Refuse Disposal (Amenity) Act 1978 s 1. As from a day to be appointed s 1 is repealed by the Environmental Protection Act 1990 Sch 16 Pt II. At the date at which this volume states the law no such day had been appointed.

The Refuse Disposal (Amenity) Act 1978 does not extend to Northern Ireland: s 13(5). As to the application of the Refuse Disposal (Amenity) Act 1978 to the Isles of Scilly see s 9; and the Isles of Scilly (Refuse Disposal (Amenity) Act 1978) Order 1984, SI 1984/288.

2 For the purposes of the Refuse Disposal (Amenity) Act 1978 s 1, 'local authority' means, in relation to England: (1) in Greater London, the council of a London borough or the Common Council of the City of London; (2) in the metropolitan county of Greater Manchester (excluding the metropolitan district of Wigan), the Greater Manchester Waste Disposal Authority; (3) in the metropolitan county of Merseyside, the Merseyside Waste Disposal Authority; (4) in all other areas in England, the council of the county or metropolitan district: s 1(7) (definition substituted by SI 1985/1884). As to the meaning of 'local authority' generally see PARA 99.

3 'Refuse' includes any matter whatsoever, whether inorganic or organic: Refuse Disposal (Amenity) Act 1978 s 1(7).

Refuse Disposal (Amenity) Act 1978 s 1(1). As from the relevant date, this provision is substituted so that it is the duty of a local authority to provide places where refuse, other than refuse falling to be disposed of in the course of a business, may be deposited at all reasonable times (including at least one period of time on the Saturday or the following day of each week except a week in which the Saturday is 25 December or 1 January) free of charge by any person: see s 1(1) (substituted by s 1(8)). The 'relevant date' means such day as the Secretary of State may by order appoint: ss 11(1), 13(3). Different days may be appointed for different

provisions, and for such different purposes of the same provision as may be specified in the order: see s 13(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

5 Refuse Disposal (Amenity) Act 1978 s 1(2). This power is without prejudice to the generality of its duty under s 1(1): see s 1(2).

6 Refuse Disposal (Amenity) Act 1978 s 1(3)(a). Every local authority is required to establish and maintain a register for its area of persons carrying on business as motor salvage operators in the area: see the Vehicles (Crime) Act 2001 Pt 1 (ss 1-16); and PARA 750 et seq. As to the disposal and recycling of vehicles which are waste see the End-of-Life Vehicles Regulations 2003, SI 2003/2635; and PARA 651.

7 Refuse Disposal (Amenity) Act 1978 s 1(3)(b).

8 Refuse Disposal (Amenity) Act 1978 s 1(3)(c).

9 Refuse Disposal (Amenity) Act 1978 s 1(4).

10 Refuse Disposal (Amenity) Act 1978 s 1(5).

11 Refuse Disposal (Amenity) Act 1978 s 1(5). Such an order is enforceable on the application of the Secretary of State by mandatory order (formerly an order of mandamus): see s 1(6).

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742. Penalty for unauthorised dumping.

Any person who, without lawful authority: (1) abandons¹ on any land in the open air, or on any other land forming part of a highway, a motor vehicle² or anything which formed part of a motor vehicle and was removed from it in the course of dismantling the vehicle on the land³; or (2) abandons on any such land any thing other than a motor vehicle, being a thing which he has brought to the land for the purpose of abandoning it there⁴, is guilty of an offence and liable on summary conviction to a penalty⁵.

Where on any occasion it appears to an authorised officer⁶ of a local authority⁷ that a person has committed the offence of abandoning a motor vehicle⁸ in the area of that authority, the officer may give that person a notice⁹ offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the authority¹⁰.

Where a person is given such a notice¹¹ in respect of an offence: (a) no proceedings may be instituted for that offence before the expiration of the period of 14 days following the date of the notice¹²; and (b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period¹³.

Such a notice must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence¹⁴, and must also state: (i) the period during which¹⁵ proceedings will not be taken for the offence¹⁶; (ii) the amount of the fixed penalty¹⁷; and (iii) the person to whom and the address at which the fixed penalty may be paid¹⁸.

Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount¹⁹ of the penalty (in cash or otherwise) to the person mentioned in head (iii) above at the address so mentioned²⁰. The local authority to which a fixed penalty is payable²¹ may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority²².

In any proceedings a certificate which purports to be signed on behalf of the chief finance officer²³ of the local authority, and states that payment of a fixed penalty was or was not received by a date specified in the certificate, is evidence of the facts stated²⁴.

If an authorised officer²⁵ of a local authority proposes to give a person a notice as described above²⁶, the officer may require the person to give him his name and address²⁷. A person commits an offence if he fails to give his name and address when required to do so²⁸, or if he gives a false or inaccurate name or address in response to such a requirement²⁹.

A local authority may use its fixed penalty receipts³⁰ only for the purposes of specific statutory functions³¹. A local authority must supply the appropriate person with such information relating to its use of its fixed penalty receipts as the appropriate person may require³².

The appropriate person may by regulations³³:

- 1776 (A) make provision for what a local authority is to do with its fixed penalty receipts pending their being used for the purposes of the functions of the authority referred to above³⁴; or if they are not so used before such time after their receipt as may be specified by the regulations³⁵;

1777 (B) make provision for accounting arrangements in respect of a local authority's fixed penalty receipts³⁶.

1 For these purposes, a person who leaves any thing on any land in such circumstances or for such a period that he may reasonably be assumed to have abandoned it or to have brought it to the land for the purpose of abandoning it there is deemed to have abandoned it there or, as the case may be, to have brought it to the land for that purpose unless the contrary is shown: Refuse Disposal (Amenity) Act 1978 s 2(2).

2 'Motor vehicle' means a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer, and anything attached to such a vehicle or trailer: Refuse Disposal (Amenity) Act 1978 s 11(1).

3 Refuse Disposal (Amenity) Act 1978 s 2(1)(a). As to the disposal and recycling of vehicles which are waste see the End-of-Life Vehicles Regulations 2003, SI 2003/2635; and PARA 651.

4 Refuse Disposal (Amenity) Act 1978 s 2(1)(b).

5 Refuse Disposal (Amenity) Act 1978 s 2(1). The penalty is a fine of an amount not exceeding level 4 on the standard scale or imprisonment for a term not exceeding three months or both: see s 2(1) (amended by virtue of the Criminal Justice Act 1982 ss 35, 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

As from a day to be appointed, the Refuse Disposal (Amenity) Act 1978 s 2(1) is further amended so as to refer to 51 weeks instead of three months: see s 2(1) (prospectively amended by the Criminal Justice Act 2003 Sch 26 para 25). At the date at which this volume states the law no such day had been appointed.

6 For these purposes, 'authorised officer', in relation to a local authority, means an employee of the authority who is authorised in writing by the authority for the purposes of giving notices under the Refuse Disposal (Amenity) Act 1978 s 2A: ss 2A(14), 2B(4) (ss 2A-2C added by the Clean Neighbourhoods and Environment Act 2005 s 10).

7 As to the meaning of 'local authority' for these purposes see PARA 99.

8 Ie an offence under the Refuse Disposal (Amenity) Act 1978 s 2(1)(a): see head (1) in the text.

9 The form of a notice under the Refuse Disposal (Amenity) Act 1978 s 2A is to be such as the appropriate person may by order prescribe: s 2A(7) (as added: see note 6). 'Appropriate person' means: (1) in relation to a local authority in England, the Secretary of State (see PARA 58); (2) in relation to a local authority in Wales, the Welsh Ministers (see PARA 59): s 11(1) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 14(1), (3)).

An order or regulations under the Refuse Disposal (Amenity) Act 1978 s 2A may make different provision for different purposes and in relation to different areas: s 2A(12) (as so added).

10 Refuse Disposal (Amenity) Act 1978 s 2A(1) (as added: see note 6).

11 Ie a notice under the Refuse Disposal (Amenity) Act 1978 s 2A.

12 Refuse Disposal (Amenity) Act 1978 s 2A(2)(a) (as added: see note 6).

13 Refuse Disposal (Amenity) Act 1978 s 2A(2)(b) (as added: see note 6).

14 Refuse Disposal (Amenity) Act 1978 s 2A(3) (as added: see note 6).

15 Ie by virtue of the Refuse Disposal (Amenity) Act 1978 s 2A(2): see heads (a) and (b) in the text.

16 Refuse Disposal (Amenity) Act 1978 s 2A(4)(a) (as added: see note 6).

17 Refuse Disposal (Amenity) Act 1978 s 2A(4)(b) (as added: see note 6).

18 Refuse Disposal (Amenity) Act 1978 s 2A(4)(c) (as added: see note 6).

19 The fixed penalty payable to a local authority under the Refuse Disposal (Amenity) Act 1978 s 2A is, subject to s 2A(9), £200: s 2A(8) (as added: see note 6). The appropriate person may by order substitute a different amount for the amount for the time being specified in s 2A(8): s 2A(9) (as so added).

20 Refuse Disposal (Amenity) Act 1978 s 2A(5) (as added: see note 6).

Where a letter is sent in accordance with s 2A(5), payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post: s 2A(6) (as so added).

21 Ie payable under the Refuse Disposal (Amenity) Act 1978 s 2A.

22 Refuse Disposal (Amenity) Act 1978 s 2A(10) (as added: see note 6). The appropriate person may by regulations restrict the extent to which, and the circumstances in which, a local authority may make provision under s 2A(10): s 2A(11) (as so added). See also note 9. As to the regulations that have been made under s 2A(11) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175. See also the Environmental Offences (Use of Fixed Penalty Receipts) (Wales) Regulations 2007, SI 2007/739 (amended by SI 2008/663); and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663.

23 For these purposes, 'chief finance officer', in relation to a local authority, means the person having responsibility for the financial affairs of the authority: Refuse Disposal (Amenity) Act 1978 s 2A(14) (as added: see note 6).

24 Refuse Disposal (Amenity) Act 1978 s 2A(13) (as added: see note 6).

25 See note 6.

26 Ie a notice under the Refuse Disposal (Amenity) Act 1978 s 2A.

27 Refuse Disposal (Amenity) Act 1978 s 2B(1) (as added: see note 6).

28 Ie when required to do so under the Refuse Disposal (Amenity) Act 1978 s 2B(1).

29 Refuse Disposal (Amenity) Act 1978 s 2B(2) (as added: see note 6). A person guilty of an offence under s 2B(2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 2B(3) (as so added).

30 Ie amounts paid to a local authority in pursuance of notices under the Refuse Disposal (Amenity) Act 1978 s 2A: see s 2C(1) (as added: see note 6).

31 Refuse Disposal (Amenity) Act 1978 s 2C(2) (as added: see note 6). The local authority's functions are: (1) its functions under the Refuse Disposal (Amenity) Act 1978; (2) its functions under the Road Traffic Regulation Act 1984 ss 99-102 (removal or immobilisation of vehicles) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 870 et seq); (3) its functions relating to the enforcement of the Clean Neighbourhoods and Environment Act 2005 ss 3, 4 (nuisance parking offences) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 827); and (4) such other of its functions as may be specified in regulations made by the appropriate person: see the Refuse Disposal (Amenity) Act 1978 s 2C(2)(a)-(d) (as so added). Regulations under head (4) above may in particular have the effect that a local authority may use its fixed penalty receipts for the purposes of any of its functions: s 2C(3) (as so added). See also heads (a) and (b) in the text; and notes 33-36. As to the regulations that have been made under s 2C(2)(d), (3) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175.

32 Refuse Disposal (Amenity) Act 1978 s 2C(4) (as added: see note 6).

33 Before making regulations under the Refuse Disposal (Amenity) Act 1978 s 2C, the appropriate person must consult: (1) the authorities to which the regulations are to apply; (2) such other persons as the appropriate person thinks fit: s 2C(7) (as added: see note 6). The powers to make regulations conferred by s 2C are, for the purposes of the Local Government Act 2003 s 100(1), to be regarded as included among the powers mentioned in s 100(2) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 789): Refuse Disposal (Amenity) Act 1978 s 2C(8) (as so added).

34 Refuse Disposal (Amenity) Act 1978 s 2C(5)(a)(i) (as added: see note 6). The functions are those under s 2C(2): see note 31.

35 Refuse Disposal (Amenity) Act 1978 s 2C(5)(a)(ii) (as added: see note 6). The provision that may be made under s 2C(5)(a)(ii) includes, in particular, provision for the payment of sums to a person (including the appropriate person) other than the authority: s 2C(6) (as so added).

36 Refuse Disposal (Amenity) Act 1978 s 2C(5)(b) (as added: see note 6).

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743. Removal of abandoned vehicles.

Where it appears to a local authority¹ that a motor vehicle² in its area is abandoned without lawful authority on any land in the open air or on any other land forming part of a highway, it is the duty of the authority to remove the vehicle³. Where it appears to a local authority that the land on which a motor vehicle is abandoned is occupied by any person, the authority must give him notice that it proposes to remove the vehicle in pursuance of these provisions⁴. The local authority is not entitled to remove the vehicle if the occupier of the land objects to the proposal within the prescribed period⁵.

No action lies against a local authority in respect of damage resulting from its failure to carry out its duty under these provisions⁶; but if the Secretary of State is satisfied, after holding a local inquiry, that a local authority has failed to carry out that duty he may by order require the authority to take such steps for carrying it out as are specified in the order⁷.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'motor vehicle' see PARA 742 note 2.

Refuse Disposal (Amenity) Act 1978 s 3(1). A local authority is not required by virtue of s 3(1) to remove a vehicle situated otherwise than on a carriageway within the meaning of the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 64) if it appears to the authority that the cost of its removal to the nearest convenient carriageway within the meaning of that Act would be unreasonably high: Refuse Disposal (Amenity) Act 1978 s 3(3) (amended by the Highways Act 1980 Sch 24 para 30).

Any vehicle removed under the Refuse Disposal (Amenity) Act 1978 s 3 by the council of a London borough whose area is included in the area of a London waste disposal authority, or by the council of a metropolitan district whose area is included in the area of the Greater Manchester Waste Disposal Authority or the Merseyside Waste Disposal Authority, must be delivered by the council to the authority in question in accordance with such arrangements (including arrangements as to the sharing of any expenses incurred or sums received by the council and the authority under the Refuse Disposal (Amenity) Act 1978) as may be agreed between the council and the authority or, in default of agreement, as may be determined by arbitration: s 3(6) (substituted by SI 1985/1884). 'London waste disposal authority' means an authority established by the Waste Regulation and Disposal (Authorities) Order 1985, SI 1985/1884, Sch 1 Pt II, III, IV or V: Refuse Disposal (Amenity) Act 1978 s 11(1) (definition added by SI 1985/1884). In the Refuse Disposal (Amenity) Act 1978 ss 3, 5 (see also PARA 745), 'the area of the Greater Manchester Waste Disposal Authority' is the metropolitan county of Greater Manchester excluding the metropolitan district of Wigan: s 3(10) (added by SI 1985/1884). Any vehicle removed by the council of a non-metropolitan district in England under these provisions must be delivered by the council to the county council in accordance with such arrangements (including arrangements as to the sharing of any expenses incurred or sums received by the district council and the county council under the Refuse Disposal (Amenity) Act 1978) as may be agreed between the district council and the county council or, in default of agreement, as may be determined by arbitration: s 3(7) (amended by the Local Government Act 1985 Sch 6 para 4).

While a vehicle is in the custody of a local authority, a London waste disposal authority, the Greater Manchester Waste Disposal Authority, the Merseyside Waste Disposal Authority or the council of a county in England in pursuance of these provisions, it is the duty of that body to take such steps as are reasonably necessary for the safe custody of the vehicle: Refuse Disposal (Amenity) Act 1978 s 3(8) (amended by the Local Government Act 1985 Sch 17; the Clean Neighbourhoods and Environment Act 2005 Sch 5 Pt 1; and SI 1985/1884).

Any authority on whom functions are conferred under the Refuse Disposal (Amenity) Act 1978 s 3 or s 4 (see PARA 744) must, in exercising those functions, have regard to any guidance given to the authority for the purpose by the appropriate person: s 4A (added by the Clean Neighbourhoods and Environment Act 2005 s 13). As to the meaning of 'appropriate person' see PARA 742 note 9.

As to the disposal of removed vehicles see PARA 744. As to the disposal and recycling of vehicles which are waste see the End-of-Life Vehicles Regulations 2003, SI 2003/2635; and PARA 651.

4 Refuse Disposal (Amenity) Act 1978 s 3(2) (amended by the Local Government, Planning and Land Act 1980 Sch 34 Pt III). As to the giving of guidance to the authority see note 3.

The Refuse Disposal (Amenity) Act 1978 s 3(2) does not apply where the vehicle is abandoned on a road (within the meaning of the Road Traffic Regulation Act 1984) (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 206): Refuse Disposal (Amenity) Act 1978 s 3(2A) (added by the Clean Neighbourhoods and Environment Act 2005 s 11(1), (2)).

5 Refuse Disposal (Amenity) Act 1978 s 3(2) (as amended: see note 4). As to the non-application of s 3(2) see also note 4. 'Prescribed' means prescribed by regulations: s 11(1). As to the regulations made see the Removal and Disposal of Vehicles Regulations 1986, SI 1986/183 (amended by SI 1993/278; SI 1993/1708; SI 1994/1503; SI 1996/1008; SI 1997/2971; SI 2002/746; SI 2002/2777; SI 2005/3252; and SI 2007/3484).

6 See the Refuse Disposal (Amenity) Act 1978 ss 1(5), 3(9). The duty referred to in the text is the duty under s 3(1), (2) (see the text and notes 1-5): see s 3(9).

7 See the Refuse Disposal (Amenity) Act 1978 ss 1(5), 3(9). Such an order is enforceable on the application of the Secretary of State by mandatory order (formerly an order of mandamus): see ss 1(6), 3(9).

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744. Disposal of removed vehicles.

A local authority¹ may, in such manner as it thinks fit, dispose of any vehicle which is in its custody²:

1778 (1) in the case of a vehicle which in the opinion of the authority is in such a condition that it ought to be destroyed, at any time after its removal³;

1779 (2) in the case of a vehicle, not falling within head (1) above, which:

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138. (a) does not display a licence⁴ (whether current or otherwise and whether or not the vehicle is required to display a licence)⁵; and

139. (b) does not display any registration mark (whether indicating registration within or outside the United Kingdom)⁶,

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1780 at any time after its removal⁷;

1781 (3) in any other case, at any time after the local authority has taken such steps as may be prescribed⁸ to find a person appearing to it to be the owner⁹ of the vehicle and either: (a) it has failed to find such a person¹⁰; or (b) he has failed to comply with a notice served on him in the prescribed manner by the local authority requiring him to remove the vehicle within the prescribed period from its custody¹¹.

The power to dispose of vehicles conferred on a local authority by these provisions includes power to provide plant and apparatus for the purpose of disposing of vehicles¹².

If before a vehicle is disposed of by a local authority in pursuance of these provisions the vehicle is claimed by a person who satisfies the authority that he is its owner and pays to the authority such sums in respect of its removal and storage as may be prescribed, the local authority must permit him to remove the vehicle from its custody during such period as may be prescribed¹³.

If before the expiration of the period of one year beginning with the date on which a vehicle is sold by a local authority in pursuance of these provisions any person satisfies the authority that at the time of its sale he was the owner of the vehicle, the local authority must pay over to him any sum by which the proceeds of sale exceed the aggregate of such sums in respect of the removal, storage and disposal of the vehicle as may be prescribed¹⁴.

1 For the purposes of the Refuse Disposal (Amenity) Act 1978 s 4, 'local authority' means, in relation to England: (1) in the area of a London waste disposal authority, that authority; (2) in other areas of Greater London, the council of a London borough or the Common Council of the City of London; (3) in the metropolitan county of Greater Manchester (excluding the metropolitan district of Wigan), the Greater Manchester Waste Disposal Authority; (4) in the metropolitan county of Merseyside, the Merseyside Waste Disposal Authority; and (5) in other areas in England, the council of the county or metropolitan district: s 4(8) (substituted by SI 1985/1884). As to the meaning of 'London waste disposal authority' see PARA 743 note 3. As to the meaning of 'local authority' generally see PARA 99.

2 In pursuance of the Refuse Disposal (Amenity) Act 1978 s 3: see PARA 743.

As to guidance for any authority on whom functions are conferred under s 3 (see PARA 743) or s 4 see s 4A; and PARA 743 note 3.

As to the disposal and recycling of vehicles which are waste see the End-of-Life Vehicles Regulations 2003, SI 2003/2635; and PARA 651.

3 Refuse Disposal (Amenity) Act 1978 s 4(1)(a) (s 4(1)(a), (b) substituted by the Clean Neighbourhoods and Environment Act 2005 s 12(1), (2)).

4 'Licence' means, in relation to a vehicle, a licence issued for the vehicle under the Vehicle Excise and Registration Act 1994 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 718; **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 871), including a nil licence within the meaning of that Act: Refuse Disposal (Amenity) Act 1978 s 11(1) (definition amended by the Vehicle Excise and Registration Act 1994 Sch 3 para 12; and the Clean Neighbourhoods and Environment Act 2005 s 12(1), (4)).

5 Refuse Disposal (Amenity) Act 1978 s 4(1)(b)(i) (as substituted: see note 3).

6 Refuse Disposal (Amenity) Act 1978 s 4(1)(b)(ii) (as substituted: see note 3). As to the meaning of 'United Kingdom' see PARA 1 note 2.

7 Refuse Disposal (Amenity) Act 1978 s 4(1)(b) (as substituted: see note 3).

8 'Prescribed' means prescribed by regulations: Refuse Disposal (Amenity) Act 1978 s 11(1). As to the regulations made see the Removal and Disposal of Vehicles Regulations 1986, SI 1986/183; and PARA 743 note 5. See also the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008, SI 2008/2095 (amended by SI 2008/3013).

9 'Owner', in relation to a motor vehicle which is the subject of a hiring agreement or hire-purchase agreement, includes the person entitled to possession of the vehicle under the agreement: Refuse Disposal (Amenity) Act 1978 s 11(1). As to the meaning of 'motor vehicle' see PARA 742 note 2.

If in the case of any vehicle it appears to a local authority that more than one person is or was its owner at the relevant time, such one of them as the authority thinks fit is to be treated as its owner for the purposes of s 4(5), (6) (see the text and notes 12-13): s 4(7).

10 Refuse Disposal (Amenity) Act 1978 s 4(1)(c)(i).

11 Refuse Disposal (Amenity) Act 1978 s 4(1)(c)(ii).

12 Refuse Disposal (Amenity) Act 1978 s 4(3).

13 Refuse Disposal (Amenity) Act 1978 s 4(5). See also note 8. Section 4 has effect in the area of a borough council with new provisions substituted for s 4(5): see the London Local Authorities Act 2007 s 28.

14 Refuse Disposal (Amenity) Act 1978 s 4(6). See also note 8.

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745. Recovery of expenses connected with removed vehicles.

Where a vehicle is removed¹ the appropriate authority² is entitled to recover from any person responsible³: (1) such charges as may be prescribed⁴ in respect of the removal of the vehicle⁵; (2) charges ascertained by reference to a prescribed scale in respect of any period during which the vehicle is in the custody of the authority⁶; and (3) where the vehicle is disposed of⁷, charges determined in the prescribed manner in respect of its disposal⁸. Any sum recoverable by virtue of these provisions is recoverable as a simple contract debt in any court of competent jurisdiction⁹.

1 In pursuance of the Refuse Disposal (Amenity) Act 1978 s 3(1): see PARA 743.

2 For the purposes of the Refuse Disposal (Amenity) Act 1978 s 5, 'appropriate authority' means: (1) in the case of a vehicle removed in pursuance of s 3(1) (see PARA 743) by the council of a London borough whose area is included in the area of a London waste disposal authority, that authority; (2) in the case of a vehicle so removed by the council of a metropolitan district whose area is included in the area of the Greater Manchester Waste Disposal Authority or the Merseyside Waste Disposal Authority, the authority in question; (3) in the case of a vehicle so removed by the council of a non-metropolitan district in England, the county council; and (4) in the case of a vehicle so removed by any other local authority in England or by a local authority in Wales, that local authority: s 5(4) (definition substituted by SI 1985/1884). As to the meanings of 'London waste disposal authority' and 'the area of the Greater Manchester Waste Disposal Authority' see PARA 743 note 3. As to the meaning of 'local authority' see PARA 99.

3 'Person responsible', in relation to a vehicle, means: (1) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless he shows that he was not concerned in and did not know of its being put there; (2) any person by whom it was put in that place; (3) any person convicted of an offence under the Refuse Disposal (Amenity) Act 1978 s 2(1) (see PARA 742) in consequence of the putting of the vehicle in that place: s 5(4).

4 'Prescribed' means prescribed by regulations: Refuse Disposal (Amenity) Act 1978 s 11(1). As to the regulations made see the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008, SI 2008/2095; and PARA 744 note 8.

5 Refuse Disposal (Amenity) Act 1978 s 5(1)(a). As to the disposal and recycling of vehicles which are waste see the End-of-Life Vehicles Regulations 2003, SI 2003/2635; and PARA 651.

6 Refuse Disposal (Amenity) Act 1978 s 5(1)(b). For these purposes: (1) a vehicle removed in pursuance of s 3(1) (see PARA 743) by the council of a London borough whose area is included in the area of a London waste disposal authority, or by the council of a metropolitan district whose area is included in the area of the Greater Manchester Waste Disposal Authority or the Merseyside Waste Disposal Authority, is to be treated as in the control of the authority in question while it was in the custody of the council by whom it was so removed; and (2) a vehicle so removed by the council of a non-metropolitan district in England is to be treated as in the custody of the county council while it was in the custody of the district council by whom it was so removed: s 5(5) (amended by the Local Government Act 1985 Sch 6 para 4, Sch 17; and SI 1985/1884).

7 In pursuance of the Refuse Disposal (Amenity) Act 1978 s 4: see PARA 744.

8 Refuse Disposal (Amenity) Act 1978 s 5(1)(c).

9 Refuse Disposal (Amenity) Act 1978 s 5(2). Without prejudice to s 5(2), the court by which a person is convicted of an offence under s 2(1) (see PARA 742) in respect of a motor vehicle may, on the application of the appropriate authority and in addition to any other order made by the court in relation to that person, order him to pay to the authority any sum which, in the opinion of the court, the authority is entitled to recover from him under s 5 in respect of the vehicle: s 5(3). As to the meaning of 'motor vehicle' see PARA 742 note 2.

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746. Removal and disposal etc of other refuse.

Where it appears to a local authority¹ that any thing in its area, other than a motor vehicle², is abandoned without lawful authority on any land in the open air or on any other land forming part of a highway, the authority may if it thinks fit remove the thing³. A local authority is not entitled to exercise its powers under these provisions as respects a thing situated on land appearing to the authority to be occupied by any person unless the authority has given him notice that it proposes to remove the thing and he has failed to object to the proposal within the prescribed period⁴.

A local authority by whom any thing is removed in pursuance of these provisions is entitled to recover the cost of removing and disposing of it from: (1) any person by whom it was put in the place from which it was so removed⁵; or (2) any person convicted of an offence⁶ in consequence of the putting of the thing in that place⁷. Any sum recoverable by virtue of these provisions is recoverable as a simple contract debt in any court of competent jurisdiction⁸.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'motor vehicle' see PARA 742 note 2.

3 Refuse Disposal (Amenity) Act 1978 s 6(1). The provisions of the Public Health Act 1936 s 76 (with the exception of s 76(3)(a)) are applied to any thing removed in pursuance of the Refuse Disposal (Amenity) Act 1978 s 6(1) as they apply to other refuse: see s 6(3). However, the Public Health Act 1936 s 76 has been repealed by the Control of Pollution Act 1974 Sch 4. As from the relevant date, the Refuse Disposal (Amenity) Act 1978 s 6(3) is substituted so as to provide that a local authority may: (1) provide for the deposit of any thing removed by it under s 6(1); (2) provide plant and apparatus for the treatment or disposal of any thing deposited at such a place; and (3) sell or otherwise dispose of any such thing: s 6(3) (substituted by s 6(8)(a)). As to the meaning of 'relevant date' see PARA 741 note 4.

4 Refuse Disposal (Amenity) Act 1978 s 6(2) (amended by the Local Government, Planning and Land Act 1980 Sch 34 Pt III). 'Prescribed' means prescribed by regulations: Refuse Disposal (Amenity) Act 1978 s 11(1). At the date at which this volume states the law no regulations had been made under this provision, but the Removal of Refuse Regulations 1967, SI 1967/1240, have effect as if so made: see the Refuse Disposal (Amenity) Act 1978 s 12(3), (4).

5 Refuse Disposal (Amenity) Act 1978 s 6(4)(a).

6 Ie under the Refuse Disposal (Amenity) Act 1978 s 2(1): see PARA 742.

7 Refuse Disposal (Amenity) Act 1978 s 6(4)(b).

8 See the Refuse Disposal (Amenity) Act 1978 ss 5(2), 6(6). The court by which a person is convicted of an offence under s 2(1) (see PARA 742) in respect of any thing other than a motor vehicle may, on the application of the relevant local authority and in addition to any other order made by the court in relation to that person, order him to pay to the authority any sum which, in the opinion of the court, the authority is entitled to recover from him under these provisions in respect of the thing: see ss 5(3), 6(6). As to the meaning of 'motor vehicle' see PARA 742 note 2.

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747. Acquisition of land.

A local authority¹ and in England the council of a county may be authorised by the Secretary of State² to acquire land compulsorily for any of the purposes of the Refuse Disposal (Amenity) Act 1978³.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Refuse Disposal (Amenity) Act 1978 s 7 (amended by the Acquisition of Land Act 1981 Sch 4 para 1, Sch 6 Pt I; and the Local Government Act 1985 Sch 17). The Acquisition of Land Act 1981 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501 et seq) applies to the compulsory acquisition of land under this provision: Refuse Disposal (Amenity) Act 1978 s 7 (as so amended).

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748. Powers of entry etc.

Any person duly authorised in writing by the Secretary of State¹ or a local authority² may at any reasonable time enter upon any land for the purpose of ascertaining whether certain functions under the Refuse Disposal (Amenity) Act 1978³ should or may be exercised in connection with the land, or for the purpose of exercising any of those functions in connection with the land⁴.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'local authority' see PARA 99.

3 Ie any of the functions conferred by the Refuse Disposal (Amenity) Act 1978 s 3 (see PARA 743) or s 6 (see PARA 746): see s 8(1).

4 Refuse Disposal (Amenity) Act 1978 s 8(1). The Town and Country Planning Act 1990 s 325(1)-(7) (which contains supplementary provisions as to rights of entry under s 324) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 57-58) has effect with the necessary modifications as if references to s 324 included references to the Refuse Disposal (Amenity) Act 1978 s 8(1): s 8(2) (s 8(2), (3) amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 41).

The Town and Country Planning Act 1990 ss 320, 322, 323, 329, 330 (which relate to local inquiries, the service of notices and the furnishing of information) (see **TOWN AND COUNTRY PLANNING**) have effect as if any reference to that Act or specified provisions of that Act included a reference to the Refuse Disposal (Amenity) Act 1978: s 8(3) (as so amended).

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749. Orders and regulations.

Any power to make regulations conferred by the Refuse Disposal (Amenity) Act 1978 includes power to make provision in respect of such cases only as may be specified in the regulations and to make different provision for different circumstances¹.

Generally, an order under any provision of the Refuse Disposal (Amenity) Act 1978 may be revoked or varied by a subsequent order under that provision².

Any power to make regulations or an order under any provision of the Refuse Disposal (Amenity) Act 1978 is exercisable by statutory instrument³.

1 Refuse Disposal (Amenity) Act 1978 s 10(1).

2 Refuse Disposal (Amenity) Act 1978 s 10(2). There is an exception in the case of an order made under s 13 (see PARA 741 note 4): see s 10(2). An order under s 13 appointing a day in respect of s 1(8) (see PARA 741 note 4) or s 6(8) (see PARA 746 note 3) may be revoked or varied by an order made by the Secretary of State which comes into force before that day: s 10(3). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Refuse Disposal (Amenity) Act 1978 s 10(4). There are exceptions in the case of orders made under s 1(5) (see PARA 741), s 5(3) (see PARA 745), and s 1(5) as applied by s 3(9) (see PARA 743): see s 10(4).

Generally, any statutory instrument made by virtue of any provision of the Refuse Disposal (Amenity) Act 1978 is subject to annulment in pursuance of a resolution of either House of Parliament: s 10(5). There are exceptions in the case of: (1) an order or regulations under s 2A (see PARA 742) or regulations under s 2C (see PARA 742) made by the Welsh Ministers; or (2) an order under s 9 (see PARA 741); or (3) an order under s 13 relating to s 1(8) (see PARA 741 note 4) or s 6(8) (see PARA 746 note 3): see s 10(5) (amended by the Clean Neighbourhoods and Environment Act 2005 s 14(1), (2)).

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(5) MOTOR SALVAGE

750. Requirement of registration.

Any person who carries on business as a motor salvage operator in the area of a local authority¹ without being registered² for that area by the authority is guilty of an offence³. For these purposes, a person carries on business as a motor salvage operator if he carries on a business which consists: (1) wholly or partly in the recovery for re-use or sale of salvageable parts from motor vehicles⁴ and the subsequent sale or other disposal for scrap of the remainder of the vehicles concerned⁵; (2) wholly or mainly in the purchase of written-off vehicles⁶ and their subsequent repair and resale⁷; (3) wholly or mainly in the sale or purchase of motor vehicles which are to be the subject (whether immediately or on a subsequent resale) of any of the activities mentioned in heads (1) and (2) above⁸; or (4) wholly or mainly in activities falling within heads (2) and (3) above⁹.

For these purposes, a person carrying on business as a motor salvage operator is to be treated as carrying on that business in the area of a local authority if (but only if): (a) premises¹⁰ in that area are occupied by him as a motor salvage yard¹¹; (b) no premises are occupied by him as a motor salvage yard (whether in that area or elsewhere) but he has his usual place of residence in that area¹²; or (c) no premises are occupied by him as a motor salvage yard (whether in that area or elsewhere) but premises in that area are occupied by him wholly or partly for the purposes of that business so far as it consists of any of the activities mentioned in heads (1) to (4) above¹³.

A person who is registered in the register and is not carrying on business as a motor salvage operator in the area of the local authority must give notice in writing to the local authority concerned of that fact within 28 days of the beginning of the period in which he is not carrying on business in that area while registered¹⁴. A person who fails to give such notice is guilty of an offence¹⁵.

The Secretary of State¹⁶ may by order amend or repeal any provision of a private or local Act passed before or in the same session as the Vehicles (Crime) Act 2001¹⁷, if it appears to him necessary or expedient to do so in consequence of the provisions for the regulation of motor salvage operators¹⁸.

1 'Local authority' means: (1) in relation to England: (a) a unitary authority; (b) a district council so far as it is not a unitary authority; (2) in relation to Wales, a county council or a county borough council: Vehicles (Crime) Act 2001 s 16(3). 'Unitary authority' means: (i) the council of a county so far as it is the council for an area for which there are no district councils; (ii) the council of any district comprised in an area for which there is no county council; (iii) a London borough council; (iv) the Common Council of the City of London in its capacity as a local authority; (v) the Council of the Isles of Scilly: s 16(4). As to local government areas and authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

2 For the purposes of the Vehicles (Crime) Act 2001 Pt 1 (ss 1-16), 'registered' means registered in accordance with the provisions of Pt 1 in a register established and maintained by a local authority under s 2; and cognate expressions are to be construed accordingly: s 1(3).

3 Vehicles (Crime) Act 2001 s 1(1). Such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 1(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the prosecution of offences under Pt 1 see PARA 758.

Generally see also the discussion of the legislation in relation to end-of-life vehicles at PARA 651.

4 'Motor vehicle' means any vehicle whose function is or was to be used on roads as a mechanically propelled vehicle: Vehicles (Crime) Act 2001 s 16(1). 'Road' means any highway and any other road to which the public has access: s 16(1). As to the meaning of 'highway' generally see **HIGHWAYS, STREETS AND BRIDGES** (2004 Reissue) PARA 1 et seq.

5 Vehicles (Crime) Act 2001 s 1(2)(a).

6 'Written-off motor vehicle' means a motor vehicle which is in need of substantial repair but in relation to which a decision has been made not to carry out the repairs: Vehicles (Crime) Act 2001 s 16(1).

7 Vehicles (Crime) Act 2001 s 1(2)(b).

8 Vehicles (Crime) Act 2001 s 1(2)(c).

9 Vehicles (Crime) Act 2001 s 1(2)(d).

10 'Premises' includes any land or other place (whether or not enclosed): Vehicles (Crime) Act 2001 s 16(1).

11 Vehicles (Crime) Act 2001 s 16(5)(a). 'Motor salvage yard' means any premises where any motor vehicles are received or kept in the course of the carrying on of business as a motor salvage operator so far as the business consists of any of the activities mentioned in s 1(2) (see heads (1)-(4) in the text) (excluding any premises where only salvageable parts of motor vehicles are so received or kept): s 16(1).

Section 16(5) has effect, in relation to any person who carries on business as a motor salvage operator in partnership with another person, as if any reference to the occupation of a place (whether as a motor salvage yard or otherwise) by a person were a reference to the occupation of that place for the purposes of the partnership by that person, alone or jointly with a member of the partnership, or by another member of the partnership alone: s 16(6).

12 Vehicles (Crime) Act 2001 s 16(5)(b). See note 11.

13 Vehicles (Crime) Act 2001 s 16(5)(c). See note 11.

14 Vehicles (Crime) Act 2001 ss 11(3), 16(1).

15 Vehicles (Crime) Act 2001 s 11(4). See further PARA 758.

16 As to the Secretary of State see PARA 58.

17 The Vehicles (Crime) Act 2001 received Royal Assent on 10 April 2001.

18 Vehicles (Crime) Act 2001 s 15(1). The provisions referred to in the text are those of Pt 1. Before exercising this power in relation to any Act which concerns the area of a local authority or county council, the Secretary of State must consult the local authority or county council concerned: s 15(2).

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751. Registers of motor salvage operators.

Every local authority¹ must establish and maintain a register for its area of persons carrying on business as motor salvage operators in that area². The register must be, subject to any requirements that may be prescribed, in such form as the local authority considers appropriate³; and each person's entry in the register must contain such particulars as may be prescribed⁴.

A person ceases to be registered in the register at the end of the period of three years beginning with the relevant day⁵ unless his registration is renewed before the end of that period⁶. Where, at the end of the period of three years beginning with the relevant day, an application for renewal of registration has been made⁷ but has not been withdrawn or finally determined, the registration of the person concerned is deemed to continue until the withdrawal or final determination of the application⁸. If the application is finally determined in favour of the applicant, the renewal is deemed to have had effect from the end of the period of three years beginning with the relevant day⁹.

A person who is registered in the register must give notice in writing to the local authority of any changes affecting his entry in the register within 28 days of the changes occurring; and the local authority must amend the register accordingly¹⁰. A person who fails to give such notice is guilty of an offence¹¹.

The local authority must secure that the contents of the register are available for inspection by members of the public at all reasonable times subject to such reasonable fees (if any) as the local authority may determine¹².

1 As to the meaning of 'local authority' for these purposes see PARA 750 note 1.

2 Vehicles (Crime) Act 2001 s 2(1).

3 Vehicles (Crime) Act 2001 s 2(2).

4 Vehicles (Crime) Act 2001 s 2(3). For these purposes, the prescribed particulars of each motor salvage operator's entry in the register are: (1) the full name and date of birth of the motor salvage operator, the full names and dates of birth of all the directors if the business is undertaken by a body corporate, or the full names and dates of birth of all the partners if the business is undertaken by a partnership; (2) the address: (a) if the operator is an individual, of his usual place of residence; (b) if the operator is a partnership, of each partner's usual place of residence; (c) if the operator is a body corporate, of its registered or principal office; and (d) of each place in the administrative area of the local authority which is occupied by the motor salvage operator wholly, mainly or partly for the purpose of carrying on a business as defined in s 1(2) (see PARA 750): Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 3. 'Partnership' has the same meaning as in the Partnership Act 1890 s 1(1) (see **PARTNERSHIP** vol 79 (2008) PARA 1): Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 2.

5 For the purposes of the Vehicles (Crime) Act 2001 s 2(4)-(6), 'relevant day' means the day on which the person was registered or (if the registration has previously been renewed) the day from which it was last so renewed: s 2(7).

6 Vehicles (Crime) Act 2001 s 2(4). Registration must be renewed in accordance with s 3 (see PARA 752): s 2(4).

7 ie under the Vehicles (Crime) Act 2001 s 3: see PARA 752.

8 Vehicles (Crime) Act 2001 s 2(5). For the purposes of s 2(5) and s 2(6) (see the text and note 9), an application is taken to be finally determined: (1) in the case of the grant of a renewal of registration, when the grant is made; (2) in the case of a refusal to grant a renewal of registration, when no appeal under s 6 (see PARA 756) is possible in relation to the refusal or any such appeal has been finally determined or withdrawn: s 2(8).

9 Vehicles (Crime) Act 2001 s 2(6). See also note 8.

10 Vehicles (Crime) Act 2001 ss 11(2), 16(1).

11 Vehicles (Crime) Act 2001 s 11(4). See further PARA 758.

12 Vehicles (Crime) Act 2001 s 2(9). If requested by any person to do so and subject to such reasonable fee (if any) as the local authority may determine, the local authority must supply the person concerned with a copy (certified to be true) of the register or of an extract from it: s 2(10). Any such certified copy is evidence of the matters mentioned in it: s 2(11).

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752. Applications for registration and renewal of registration.

An application for registration in a register of motor salvage operators¹ for a particular area or for the renewal of such a registration must be made to the local authority² concerned in accordance with such requirements as may be prescribed³; and must be accompanied by a fee of such amount (if any) as the local authority may determine⁴.

A local authority, on receiving an application for registration or renewal in respect of the register for its area, must register, or (as the case may be) renew the registration of, the applicant in that register unless it is satisfied that he is not a fit and proper person to carry on business as a motor salvage operator⁵. In deciding whether it is so satisfied, the local authority must, in particular, have regard to whether the applicant has been convicted of any of certain offences⁶, and whether the applicant has been convicted of any offences of a description specified by the Secretary of State by order⁷.

Where a local authority has refused to register⁸ a person in the register for its area, it may refuse to consider any application for registration made by that person during the period of three years beginning with the day on which the refusal was first given⁹. Where a local authority has refused to renew a person's registration in the register for its area¹⁰, it may refuse to consider any application for registration made by that person during the period of three years beginning with the day on which the refusal became final¹¹.

The provisions above are subject to the right to make representations¹².

A person applying to be registered in the register or to renew his registration in the register must give notice in writing to the local authority of any changes affecting in a material particular the accuracy of the information which he has provided in connection with his application¹³. A person who fails to give such notice is guilty of an offence¹⁴.

1 As to the register see PARA 751.

2 As to the meaning of 'local authority' for these purposes see PARA 750 note 1.

3 An application for registration in a register for a particular area or an application for the renewal of such registration must contain the following information: (1) the full name and date of birth of the applicant, or the names and dates of birth of all the directors or partners if the applicant business is undertaken by a body corporate or a partnership; (2) the address of the usual place of residence of each applicant or director or partner of the applicant business; (3) the address of each place in the administrative area of the local authority which is occupied by the applicant wholly, mainly or partly for the purpose of carrying on a business as defined in the Vehicles (Crime) Act 2001 s 1(2) (see PARA 750); (4) whether it is an initial application to register or an application for renewal of registration; (5) whether any previous application for registration has been refused and, if so, by which local authority, and for what reasons; (6) any convictions for any offence under Pt 1 (ss 1-16); (7) any conviction for any offence specified in an order made by the Secretary of State in pursuance of his power under s 3(4)(b) (see the text and note 7); (8) whether the applicant, or any of the directors or partners of the applicant business, is a bankrupt: Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 4. 'Bankrupt' has the same meaning as in the Insolvency Act 1986 s 381 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 84): Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 2. As to the Secretary of State see PARA 58.

4 Vehicles (Crime) Act 2001 s 3(1). A local authority may set the level of fees to be charged in respect of applications with a view to recovering the reasonable costs incurred by it in connection with the administration of Pt 1, and so that different fees are payable in different circumstances: s 3(2).

5 Vehicles (Crime) Act 2001 s 3(3). For these purposes, a local authority is satisfied that:

85 (1) a company is not a fit and proper person to carry on business as a motor salvage operator if it is satisfied that any director of the company is not a fit and proper person to carry on such a business;

86 (2) a limited liability partnership is not a fit and proper person to carry on business as a motor salvage operator if it is satisfied that any member of the partnership is not a fit and proper person to carry on such a business,

and s 3(4) is to be construed accordingly: s 13.

6 Vehicles (Crime) Act 2001 s 3(4)(a). See note 5. The offences referred to in the text are any offences under Pt 1. References in Pt 1 to offences under Pt 1 include references to anything which is an offence by virtue of s 7(3), (4) (see PARA 756) or s 8(2), (3) (notification of destruction of motor vehicles): s 16(7).

The Secretary of State may by regulations provide for the notification by registered persons of the destruction of motor vehicle: s 8(1). Such regulations may specify provisions of the regulations as provisions to which s 8(3) applies: s 8(2). A person who contravenes any provision to which this provision applies is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 8(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law no such regulations had been made.

7 Vehicles (Crime) Act 2001 s 3(4)(b). See note 5. The following offences are specified for these purposes: (1) theft or attempted theft of or from a motor vehicle, contrary to the Theft Act 1968 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282); (2) aggravated vehicle-taking, contrary to s 12A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 299); (3) handling stolen goods, contrary to s 22 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 302); (4) going equipped to steal or take a motor vehicle, contrary to s 23 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 305); (5) interference with a motor vehicle, contrary to the Criminal Attempts Act 1981 s 9 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 300); (6) tampering with a motor vehicle, contrary to the Road Traffic Act 1988 s 25 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 1049); Motor Salvage Operators (Specified Offences) Order 2002, SI 2002/1917, art 2.

8 le under the Vehicles (Crime) Act 2001 s 3(1).

9 Vehicles (Crime) Act 2001 s 3(5).

10 le under the Vehicles (Crime) Act 2001 s 3(1).

11 Vehicles (Crime) Act 2001 s 3(6).

12 Vehicles (Crime) Act 2001 s 3(7). As to such right see s 5; and PARA 754.

13 Vehicles (Crime) Act 2001 s 11(1).

14 Vehicles (Crime) Act 2001 s 11(4). See further PARA 758.

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753. Cancellation of registration.

A local authority¹ may cancel a person's registration in the register of motor salvage operators² for its area if it is satisfied that he is not a fit and proper person to carry on business as a motor salvage operator³. In deciding whether it is so satisfied, the local authority must have regard, in particular, to the matters to which it must have regard⁴ on an application for registration or renewal of registration⁵. A local authority may cancel a person's registration in the register for its area if it is satisfied that he is not carrying on business as a motor salvage operator in that area and has not, while registered, been doing so for at least 28 days⁶.

A cancellation under these provisions does not have effect: (1) if no appeal is brought⁷, before the end of the period of 21 days⁸; (2) if an appeal is brought⁹, before the final determination or withdrawal of the appeal¹⁰.

Where a local authority has cancelled a person's registration in the register for its area, it may refuse to consider any application for registration made by that person during the period of three years beginning with the day on which the cancellation had effect¹¹.

The provisions above are subject to the right to make representations¹².

1 As to the meaning of 'local authority' see PARA 750 note 1.

2 As to the register see PARA 751.

3 Vehicles (Crime) Act 2001 s 4(1). For these purposes, a local authority is satisfied that:

87 (1) a company is not a fit and proper person to carry on business as a motor salvage operator if it is satisfied that any director of the company is not a fit and proper person to carry on such a business;

88 (2) a limited liability partnership is not a fit and proper person to carry on business as a motor salvage operator if it is satisfied that any member of the partnership is not a fit and proper person to carry on such a business,

and s 4(2) is to be construed accordingly: s 13.

4 Ie by virtue of the Vehicles (Crime) Act 2001 s 3(4): see PARA 752.

5 Vehicles (Crime) Act 2001 s 4(2). See also note 3.

6 Vehicles (Crime) Act 2001 s 4(3).

7 Ie under the Vehicles (Crime) Act 2001 s 6: see PARA 755.

8 Vehicles (Crime) Act 2001 s 4(4)(a). The period referred to in the text is the period mentioned in s 6(2): see PARA 755.

9 Ie under the Vehicles (Crime) Act 2001 s 6: see PARA 755.

10 Vehicles (Crime) Act 2001 s 4(4)(b).

11 Vehicles (Crime) Act 2001 s 4(5).

12 Vehicles (Crime) Act 2001 s 4(6).

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754. Right to make representations.

A local authority¹ must not:

- 1782 (1) refuse to register a person who has made an application² for registration in the register of motor salvage operators³ for its area⁴;
- 1783 (2) refuse to renew the registration of a person who has made an application⁵ for renewal of registration in the register for its area⁶; or
- 1784 (3) cancel a person's registration in the register for its area,

unless it has complied with the following provisions⁷.

The local authority must serve a notice in writing on the person concerned stating: (a) what it is proposing to do⁸; (b) the reasons for it⁹; and (c) the period¹⁰ within which the person concerned may by notice require it to give him an opportunity to make representations about the proposal or inform it that he does not wish to make any such representations¹¹.

Where a notice has been so served by the local authority, it must not proceed with its proposed refusal or (as the case may be) cancellation until: (i) the person concerned has made representations about it or informed it that he does not wish to make any such representations¹²; (ii) the period mentioned in head (c) above has passed without the local authority being required to give the person concerned an opportunity to make representations or without it being informed that he does not wish to make any representations¹³; or (iii) the following conditions are satisfied¹⁴. The conditions are that: (A) the person concerned has required the local authority to give him an opportunity to make representations¹⁵ to it about the proposal¹⁶; (B) the local authority has allowed him a reasonable period to make his representations¹⁷; and (C) he has failed to make them within that period¹⁸. If the person concerned informs the local authority that he desires to make oral representations, the local authority must give him an opportunity of appearing before, and being heard by, a person appointed by the local authority¹⁹. If the local authority decides to proceed with its proposed refusal or (as the case may be) cancellation, it must serve a notice in writing on the person concerned informing him of its decision to proceed and of the refusal or cancellation²⁰. Such a notice must also inform the person concerned of his right to appeal²¹ against the refusal or cancellation²²; the time within which such an appeal may be brought²³; and in the case of a cancellation, the date on which the cancellation is to have effect²⁴.

1 As to the meaning of 'local authority' for these purposes see PARA 750 note 1.

2 Ie under the Vehicles (Crime) Act 2001 s 3(1): see PARA 752.

3 As to the register see PARA 751.

4 Vehicles (Crime) Act 2001 s 5(1)(a).

5 Ie under the Vehicles (Crime) Act 2001 s 3(1): see PARA 752.

6 Vehicles (Crime) Act 2001 s 5(1)(b).

7 Vehicles (Crime) Act 2001 s 5(1)(c).

8 Vehicles (Crime) Act 2001 ss 5(2)(a), 16(1).

9 Vehicles (Crime) Act 2001 ss 5(2)(b), 16(1).

10 le not less than 14 days starting with the date of service of the notice: Vehicles (Crime) Act 2001 s 5(2).

11 Vehicles (Crime) Act 2001 ss 5(2)(c), 16(1).

12 Vehicles (Crime) Act 2001 s 5(3)(a).

13 Vehicles (Crime) Act 2001 s 5(3)(b).

14 Vehicles (Crime) Act 2001 s 5(3)(c).

15 The representations may be made orally or in writing: Vehicles (Crime) Act 2001 s 5(5). The reference to representations being made in writing includes a reference to representations being made in a text which is transmitted by means of an electronic communications network or by other means but while in an electronic form, is received in legible form, and is capable of being used for subsequent reference: s 16(2) (amended by the Communications Act 2003 Sch 17 para 168).

16 Vehicles (Crime) Act 2001 s 5(4)(a).

17 Vehicles (Crime) Act 2001 s 5(4)(b).

18 Vehicles (Crime) Act 2001 s 5(4)(c).

19 Vehicles (Crime) Act 2001 s 5(6).

20 Vehicles (Crime) Act 2001 s 5(7).

21 le under the Vehicles (Crime) Act 2001 s 6: see PARA 755.

22 Vehicles (Crime) Act 2001 s 5(8)(a).

23 Vehicles (Crime) Act 2001 s 5(8)(b).

24 Vehicles (Crime) Act 2001 s 5(8)(c).

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755. Appeals.

An appeal against: (1) a refusal by a local authority¹ to register in the register of motor salvage operators² for its area a person who has made an application for registration³; (2) a refusal by a local authority to renew the registration in that register of a person who has made an application for renewal of registration⁴; or (3) the cancellation by a local authority of a person's registration in that register⁵, may be brought to a magistrates' court⁶. Such an appeal must be brought within the period of 21 days beginning with the day on which the person concerned is served with a decision notice⁷.

On an appeal under these provisions, the magistrates' court concerned may confirm, vary or reverse the local authority's decision and generally give such directions as it considers appropriate having regard to the provisions for the regulation of motor salvage operators⁸. It is the duty of the local authority to comply with any such directions but it need not comply with any directions given by the court until the time for making an application by way of case stated⁹ has passed or, if such an application is made, until the final determination or withdrawal of the application¹⁰.

1 As to the meaning of 'local authority' for these purposes see PARA 750 note 1.

2 As to the register see PARA 751.

3 Vehicles (Crime) Act 2001 s 6(1)(a).

4 Vehicles (Crime) Act 2001 s 6(1)(b).

5 Vehicles (Crime) Act 2001 s 6(1)(c).

6 Vehicles (Crime) Act 2001 s 6(1). The procedure on an appeal under s 6 is by way of complaint for an order and in accordance with the Magistrates' Courts Act 1980: Vehicles (Crime) Act 2001 s 6(3).

7 Vehicles (Crime) Act 2001 s 6(2). The notice referred to in the text is a notice under s 5(7); see PARA 754. 'Notice' means notice in writing: s 16(1). For the purposes of the time limit for bringing an appeal, the making of the complaint is treated as the bringing of the appeal: s 6(4).

8 Vehicles (Crime) Act 2001 s 6(5).

9 See under the Magistrates' Courts Act 1980 s 111: see **MAGISTRATES** vol 29(2) (Reissue) PARAS 885-887.

10 Vehicles (Crime) Act 2001 s 6(6). References in Pt 1 (ss 1-16) to an appeal under s 6 being finally determined or withdrawn include references to the final determination or withdrawal of proceedings by way of case stated which relate to a decision by a magistrates' court on an appeal under s 6: s 16(8).

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756. Keeping of records.

The Secretary of State may by regulations provide for the keeping of records by registered¹, including formerly registered, persons².

For these purposes, registered persons must keep the records set out below³. When a registered person receives any vehicle he must make and keep a record of the following information: (1) details of the vehicle registration number, vehicle identification number, make, model and colour of the vehicle⁴; (2) the name, address and contact details of the supplier of the vehicle⁵; (3) details of any proof of identity shown to the registered person by, or on behalf of the supplier of the vehicle, to establish the identity of the vehicle supplier, including whether any document produced was a United Kingdom photocard driver's licence, a passport, a utility bill, council tax bill or rent book, or other form of identification containing a photograph of the vehicle supplier⁶; (4) the general condition of the vehicle including details of the type of damage to the vehicle (for example, whether the damage has been caused by fire, water or impact) and the part of the vehicle damaged⁷; (5) the date on which the information referred to in heads (1) to (4) above was entered on the record⁸.

When a registered person sells or otherwise disposes of any vehicle, he must add the following pieces of information to the record made under heads (1) to (5) above: (a) the date of sale or other disposal of the vehicle⁹; (b) the name, address, and contact details of the person receiving the vehicle¹⁰; (c) details of any proof of identity shown to the registered person by, or on behalf of, the purchaser of the vehicle, to establish the identity of the person receiving the vehicle, including whether any document produced was a United Kingdom photocard driver's licence, a passport, a utility bill, council tax bill or rent book, or other form of identification containing a photograph of the vehicle purchaser¹¹; (d) the condition of the vehicle at the time of the sale or other disposal (for example, whether it was repaired, unrepaired, dismantled, or in the same condition as at purchase)¹²; (e) the date when the information referred to in heads (a) to (d) above was entered on the record¹³.

The records referred to above must be kept for a period of six years from the date of the last entry on the record for the vehicle¹⁴.

A person who contravenes¹⁵ the requirements imposed by head (1), (2), (5), (a), (b) or (e) above is guilty of an offence¹⁶.

1 As to the meaning of 'registered' see PARA 750 note 2.

2 Vehicles (Crime) Act 2001 s 7(1), (2). As to the Secretary of State see PARA 58.

3 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(1). The records may be maintained in either electronic or manual form and must be located at or, in the case of electronic records, accessible from the registered place of business: reg 5(2).

4 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(3)(a).

5 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(3)(b).

6 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(3)(c).

7 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(3)(d).

8 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(3)(e).

- 9 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(4)(a).
- 10 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(4)(b).
- 11 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(4)(c).
- 12 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(4)(d).
- 13 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(4)(e).
- 14 Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(5).
- 15 'Contravene', in relation to any provision of regulations, includes failing to comply with it: Vehicles (Crime) Act 2001 s 16(1).
- 16 Vehicles (Crime) Act 2001 s 7(3), (4); Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(6). Such a person is liable on summary conviction to a fine not exceeding level 4 on the standard scale: see the Vehicles (Crime) Act 2001 s 7(3), (4); Motor Salvage Operators Regulations 2002, SI 2002/1916, reg 5(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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757. Rights to enter and inspect premises.

A constable¹ may at any reasonable time enter and inspect premises² for the time being entered in a local authority's register of motor salvage operators³ as premises which are occupied as a motor salvage yard⁴ by a person carrying on business as a motor salvage operator⁵, or occupied by a person carrying on business as a motor salvage operator wholly or partly for the purposes of his business so far as it consists of any of the specified activities⁶. A constable may at any reasonable time: (1) require production of, and inspect, any motor vehicles⁷ or salvageable parts kept at premises described above⁸; and (2) require production of, inspect, and take copies of or extracts from any records which the person carrying on business as a motor salvage operator is required to keep at such premises by virtue of the provisions for the regulation of motor salvage operators⁹.

Where, on an application made by a constable, a justice of the peace is satisfied that admission to premises specified in the application is reasonably required in order to secure compliance with those provisions, or to ascertain whether those provisions are being complied with, he may issue a warrant authorising a constable to enter and inspect the premises concerned¹⁰.

A constable is not entitled to use force to enter premises in the exercise of his powers¹¹ of entry and inspection of premises but may if necessary use reasonable force in the exercise of his powers under a warrant¹². A constable, in seeking to enter any premises¹³, must, if required by or on behalf of the owner or occupier or person in charge of the premises, produce evidence of his identity, and of his authority for entering, before doing so¹⁴.

1 As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to the meaning of 'premises' see PARA 750 note 10.

3 As to the register see PARA 751. As to the meaning of 'local authority' for these purposes see PARA 750 note 1.

4 As to the meaning of 'motor salvage yard' see PARA 750 note 11.

5 Vehicles (Crime) Act 2001 s 9(1)(a).

6 Vehicles (Crime) Act 2001 s 9(1)(b). The activities referred to in the text are the activities mentioned in s 1(2): see PARA 750.

7 As to the meaning of 'motor vehicle' see PARA 750 note 4.

8 Vehicles (Crime) Act 2001 s 9(2)(a). The premises referred to in the text are those falling within s 9(1): see the text and notes 1-6.

9 Vehicles (Crime) Act 2001 s 9(2)(b).

10 Vehicles (Crime) Act 2001 s 9(3), (4).

11 Ie under the Vehicles (Crime) Act 2001 s 9(1): see the text and notes 1-6.

12 Vehicles (Crime) Act 2001 s 9(5).

13 Ie under the Vehicles (Crime) Act 2001 s 9(1): see the text and notes 1-6.

14 Vehicles (Crime) Act 2001 s 9(6).

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758. Other offences.

A person who, in making an application to be registered in a local authority's register of motor salvage operators¹ or to renew his registration in such a register: (1) makes a statement which he knows to be false in a material particular²; or (2) recklessly makes a statement which is false in a material particular³, is guilty of an offence⁴.

A person who fails to give notice to a local authority in accordance with notification requirements⁵ is guilty of an offence⁶.

Any person who, on selling a motor vehicle⁷ to a person who is in the course of carrying on business as a motor salvage operator so far as it consists of any of specified activities⁸, gives that person a false name or address is guilty of an offence⁹.

Proceedings for an offence under the provisions for the regulation of motor salvage operators¹⁰ may not be instituted except: (a) by a local authority or a constable¹¹; or (b) in any other case, with the consent of the Attorney General¹².

¹ As to the register see PARA 751. As to the meaning of 'local authority' for these purposes see PARA 750 note 1.

² Vehicles (Crime) Act 2001 s 10(1)(a).

³ Vehicles (Crime) Act 2001 s 10(1)(b).

⁴ Vehicles (Crime) Act 2001 s 10(1). Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 10(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

A person who is guilty of an offence under s 10(1) is liable to a fine on summary conviction to a fine not exceeding level 5 on the standard scale if: (1) any previous application of his to the local authority concerned for registration or renewal of registration was refused under s 3(3) (see PARA 752); or (2) any previous registration of his in the register of the local authority concerned was cancelled under s 4(1) (see PARA 753): s 10(2).

Where an offence under the Vehicles (Crime) Act 2001 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, he as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly: s 39(1). Where the affairs of a body corporate are managed by its members, s 39(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 39(2).

⁵ Ie under the Vehicles (Crime) Act 2001 s 11(1) (see PARA 752), s 11(2) (see PARA 751) or s 11(3) (see PARA 750).

⁶ Vehicles (Crime) Act 2001 s 11(4). Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 11(4). In proceedings for such an offence it is a defence for the accused to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence: s 11(5). See also note 4.

⁷ As to the meaning of 'motor vehicle' see PARA 750 note 4.

⁸ Ie mentioned in the Vehicles (Crime) Act 2001 s 1(2).

⁹ Vehicles (Crime) Act 2001 s 12. Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 12. See also note 4.

10 le the Vehicles (Crime) Act 2001 Pt 1 (ss 1-16).

11 As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

12 Vehicles (Crime) Act 2001 s 14. As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529 et seq.

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(6) ACCUMULATIONS OF RUBBISH

759. Accumulations of rubbish.

If it appears to a local authority¹ that there is on any land² in the open air in its area any rubbish³ which is seriously detrimental to the amenities of the neighbourhood, the local authority may take such steps for removing the rubbish as it may consider necessary in the interests of amenity⁴.

Not less than 28 days before taking any action under these provisions, the local authority must serve on the owner⁵ and occupier of the land a notice stating the steps which it proposes to take and giving particulars of the following provisions⁶; and a person on whom the notice is served and any other person having an interest in the land may within 28 days from the service of the notice:

- 1785 (1) serve a counter-notice on the local authority stating that he intends to take those steps himself⁷; or
- 1786 (2) appeal to a magistrates' court on the ground that the local authority was not justified in concluding that action should be taken under these provisions, or that the steps proposed to be taken are unreasonable⁸.

If a counter-notice is served, the local authority may take no further action in the matter under these provisions unless the person who served the counter-notice either: (a) fails within what seems to the local authority a reasonable time to begin to take the steps stated in the notice⁹; or (b) having begun to take those steps fails to make such progress towards their completion as seems to the local authority reasonable¹⁰.

If an appeal is brought, the local authority may take no further action in the matter under these provisions until the appeal is finally determined or withdrawn¹¹; and, on the hearing of the appeal, the court may direct the local authority to take no further action or may permit the local authority to take such steps as the court may direct or may dismiss the appeal¹².

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'land' see PARA 1 note 34; definition applied by virtue of the Public Health Act 1961 s 1(1).

3 For these purposes, 'rubbish' means rubble, waste paper, crockery and metal, and any other kind of refuse (including organic matter), but does not include any material accumulated for, or in the course of, any business: Public Health Act 1961 s 34(5) (amended by SI 2007/3538).

4 Public Health Act 1961 s 34(1) (s 34(1), (2) amended by the Civic Amenities Act 1967 s 26).

5 As to the meaning of 'owner' see PARA 116; definition applied by virtue of the Public Health Act 1961 s 1(1).

6 Public Health Act 1961 s 34(2) (as amended: see note 4).

7 Public Health Act 1961 s 34(2)(a).

8 Public Health Act 1961 s 34(2)(b).

- 9 Public Health Act 1961 s 34(3)(a).
- 10 Public Health Act 1961 s 34(3)(b).
- 11 Public Health Act 1961 s 34(4).
- 12 Public Health Act 1961 s 34(4).

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12. CONTAMINATED LAND

760. Common law.

Although controls on contaminated land took a while to develop¹, they were mostly focused on legislative controls² which for the most part deal with current contamination. Historical contamination³ is another matter and courts generally have been reluctant to develop the common law as a means of dealing with this due to the extensive framework of environmental legislation⁴. The scope for using the common law in regard to historical contamination is limited as the duty of care in negligence or a duty not to cause a nuisance must be owed to specific persons⁵.

Despite some suggestions that the Human Rights Act 1998 may be of potential assistance⁶, there remains the requirement that any damage must be reasonably foreseeable at the time at which the pollution causing the contamination occurred⁷. Although scientific knowledge has developed considerably, much historic contamination would not be actionable simply because it would not have been actionable at the time it occurred. Whatever the scientific developments that might assist matters further, contaminating incidents are less likely to arise due to the preventive pollution control regimes in place⁸. In short, unless statutory schemes are introduced specifically tackling historic contamination, the common law here remains of limited application.

1 This is in contrast to air and water quality. As to air quality and air pollution see PARA 190 et seq; and as to pollution of water see PARA 270 et seq.

2 See the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC); and PARA 761 et seq.

3 Ie contamination caused before the introduction of comprehensive legislative pollution control regimes.

4 See *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264 at 305, [1994] 1 All ER 53 at 76, HL, per Lord Goff of Chieveley. Note that some statutory civil liability schemes are available to deal with particular types of contamination eg radioactive contamination from nuclear installations under the Nuclear Installations Act 1965: see *Blue Circle Industries plc v Ministry of Defence* [1999] Ch 289, [1998] 3 All ER 385, CA. See also generally **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1487 et seq.

5 Generally see **NEGLIGENCE; NUISANCE**.

6 According to *Blue Circle Industries plc v Ministry of Defence* [1999] Ch 289, [1998] 3 All ER 385, CA, where damage is tangible (ie it amounts to actual physical damage) it will be actionable even if there is no risk to human health or plant or animal life and economic losses flowing from such damage will be recoverable. There have been suggestions that a contamination resulting in a nuisance that also amounted to a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (the 'European Convention on Human Rights') art 8 or Protocol 1 art 1 (see PARA 4) a court would be required to afford the affected party 'just satisfaction' in accordance with the Human Rights Act 1998 ss 2, 6 and 8. See generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 122 et seq.

7 See *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264, [1994] 1 All ER 53, HL, a case decided under the rule in *Rylands v Fletcher* (1868) LR 3 HL 330, as to which, in the context of water pollution where it is most useful, see PARA 276.

See also generally the European Parliament and EC Council Directive 2004/35 (OJ L143, 30.4.2004, p 56) on environmental liability with respect to the prevention and remedying of environmental damage (the 'Environmental Liability Directive'); the Environmental Damage (Prevention and Remediation) Regulations 2009, SI 2009/153; and PARA 5.

8 See PARA 159 et seq. See also PARA 761 et seq.

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761. Meanings of 'contaminated land' and 'special site'.

For the purposes of Part IIA of the Environmental Protection Act 1990¹, 'contaminated land' is any land which appears to the local authority² in whose area it is situated to be in such a condition, by reason of substances³ in, on or under the land, that: (1) significant harm⁴ is being caused or there is a significant possibility of such harm being caused⁵; or (2) pollution of controlled waters⁶ is being, or is likely to be, caused⁷.

Where it appears to a local authority that two or more different sites, when considered together, are in such a condition, by reason of substances in, on or under the land, that:

- 1787 (a) significant harm is being caused or there is a significant possibility of such harm being caused⁸; or
- 1788 (b) pollution of controlled waters is being, or is likely to be, caused⁹,

Part IIA of the Environmental Protection Act 1990¹⁰ applies in relation to each of those sites, whether or not the condition of the land at any of them, when considered alone, appears to the authority to be such that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being or is likely to be caused¹¹.

Where it appears to a local authority that any land outside, but adjoining or adjacent to, its area is in such a condition, by reason of substances in, on or under the land, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be, caused within its area, then the authority may, in exercising its functions under Part IIA of the Environmental Protection Act 1990¹² treat the land as if it were land situated within its area¹³; but this is without prejudice to the functions of the local authority in whose area the land is in fact situated¹⁴.

A 'special site' is any contaminated land: (i) which has been designated¹⁵ as such a site¹⁶; and (ii) whose designation as such has not been terminated¹⁷ by the Environment Agency¹⁸.

1 le the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC). This Part was originally added by the Environment Act 1995 s 57. In so far as s 57 confers power on the Secretary of State to make regulations or orders, give directions or issue guidance, or makes provision with respect to the exercise of any such power, it was brought into force on 21 September 1995 by the Environment Act 1995 (Commencement No 1) Order 1995, SI 1995/1983. In so far as it was not already in force, the Environment Act 1995 s 57 was brought into force in England on 1 April 2000 by the Environment Act 1995 (Commencement No 16 and Saving Provision) (England) Order 2000, SI 2000/340, and in Wales on 15 September 2001 by the Environment Act 1995 (Commencement No 20 and Saving Provision) (Wales) Order 2001, SI 2001/3211 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the application of the Environmental Protection Act 1990 Pt IIA to the Isles of Scilly see s 78Y (as so added).

2 As to the meaning of 'local authority' see PARA 99.

3 'Substance' means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour: Environmental Protection Act 1990 s 78A(1), (9) (as added: see note 1). A person who has caused or knowingly permitted any substance ('substance A') to be in, on or under any land must also be taken for the purposes of these provisions to have caused or knowingly permitted there to be in, on or under that land any substance which is there as a result of a chemical reaction or biological process affecting substance A: see the Environmental Protection Act 1990 s 78F(9); and PARA 767 note 6.

As to modifications of ss 78A, 78F(9) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, regs 5, 9 (both substituted by SI 2007/3245).

4 'Harm' means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property: Environmental Protection Act 1990 s 78A(1), (4) (as added: see note 1).

The questions:

- 89 (1) what harm is to be regarded as 'significant';
- 90 (2) whether the possibility of significant harm being caused is 'significant';
- 91 (3) whether pollution of controlled waters is being, or is likely to be caused,

must be determined in accordance with guidance issued for the purpose by the Secretary of State in accordance with s 78YA (see PARA 786): s 78A(1), (5) (as so added). As from a day to be appointed, s 78A(5) is amended so as to remove head (3) above; and so as to refer in head (1) above to harm or pollution of controlled waters and in head (2) above to significant harm or significant pollution of controlled waters: see s 78A(5) (prospectively amended by the Water Act 2003 s 86(1), (2)(b)(i)-(iii), Sch 9 Pt 3). At the date at which this volume states the law no such day had been appointed.

Without prejudice to the guidance that may be issued under the Environmental Protection Act 1990 s 78A(5), guidance under head (1) above may make provision for different degrees of importance to be assigned to, or for the disregard of:

- 92 (a) different descriptions of living organisms or ecological systems;
- 93 (b) different descriptions of places; or
- 94 (c) different descriptions of harm to health or property, or other interference,

and guidance under head (2) above may make provision for different degrees of possibility to be regarded as 'significant' (or as not being 'significant') in relation to different descriptions of significant harm: s 78A(1), (6) (as so added). As from a day to be appointed, s 78A(6) is amended so as also to refer in head (a) above to different descriptions of poisonous, noxious or polluting matter or solid waste matter, and in head (b) above to different descriptions of controlled waters or different degrees of pollution; and so that the guidance may make provision for different degrees of possibility to be regarded as 'significant' (or as not being 'significant') in relation to different descriptions of significant harm or of significant pollution: see s 78A(6) (prospectively amended by the Water Act 2003 s 86(1), (2)(c)(i)-(iii)). At the date at which this volume states the law no such day had been appointed.

See note 3.

5 Environmental Protection Act 1990 s 78A(1), (2)(a) (as added: see note 1). See note 3.

6 'Pollution of controlled waters' means the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter: Environmental Protection Act 1990 s 78A(1), (9) (as added: see note 1). 'Controlled waters', in relation to England and Wales, has the same meaning as in the Water Resources Act 1991 Pt III (ss 82-104) (see PARA 289) except that 'ground waters' does not include waters contained in underground strata but above the saturation zone: Environmental Protection Act 1990 s 78A(1), (9) (as so added; definition amended by the Water Act 2003 s 86(1), (2)(f)). See note 3. As to pollution of water generally see PARA 270 et seq.

Controlled waters are 'affected by' contaminated land if (and only if) it appears to the enforcing authority that the contaminated land in question is, for the purposes of s 78A(2), in such a condition, by reason of substances in, on or under the land, that pollution of those waters is being, or is likely to be caused: s 78A(1), (8) (as so added). As from a day to be appointed, s 78A(8) is amended so as to refer to 'significant' pollution: see s 78A(8) (prospectively amended by the Water Act 2003 s 86(1), (2)(e)). At the date at which this volume states the law no such day had been appointed.

'Enforcing authority' means: (1) in relation to a special site (see the text and notes 8-11), the appropriate agency; (2) in relation to contaminated land other than a special site, the local authority in whose area the land is situated: Environmental Protection Act 1990 s 78A(1), (9) (as so added). 'Appropriate agency' means, in relation to England and Wales, the Environment Agency: s 78A(1), (9) (as so added). As to the Environment Agency see PARA 68 et seq.

See note 3.

7 Environmental Protection Act 1990 s 78A(1), (2)(b) (as added: see note 1). As from a day to be appointed, s 78A(2)(b) is substituted so as to refer to 'significant' pollution of such waters being caused or a 'significant' possibility of such pollution being caused: see s 78A(2)(b) (prospectively substituted by the Water Act 2003 s 86(1), (2)(a)). At the date at which this volume states the law no such day had been appointed.

In determining whether any land appears to be such land, a local authority must, subject to the Environmental Protection Act 1990 s 78A(5) (see note 4), act in accordance with guidance issued by the Secretary of State in accordance with s 78YA (see PARA 786) with respect to the manner in which that determination is to be made: s 78A(1), (2) (as so added). As to guidance on the meaning of contaminated land see Department for Environment, Food and Rural Affairs (DEFRA) *Guidance on the Legal Definition of Contaminated Land* (2008); and the relevant website which was, at the date at which this volume states the law, www.defra.gov.uk.

See note 3.

The Environmental Protection Act 1990 Pt IIA does not apply if and to the extent that (1) any significant harm, or pollution of controlled waters, by reason of which land would otherwise fall to be regarded as contaminated, is attributable to the operation of a regulated facility; and (2) enforcement action may be taken in relation to that harm or pollution: s 78YB(1) (substituted for former s 78YB(1)-(2C) by SI 2007/3538). For these purposes, as to the meaning of 'regulated facility' see PARA 663 note 1; definition applied by the Environmental Protection Act 1990 s 78YB(5) (added by SI 2007/3538). 'Enforcement action' means action under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538, reg 36 (see PARA 672), reg 37 (see PARA 673) or reg 42 (see PARA 674): Environmental Protection Act 1990 s 78YB(5) (as so added).

As to modifications of s 78YB for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 17 (substituted by SI 2008/520).

As to the relationship and overlap between contamination and unlawful deposits of waste see Case C-1/03: *Re Van de Walle v Texaco Belgium SA (Région de Bruxelles-Capitale, intervening)* [2005] All ER (EC) 1139, [2004] All ER (D) 45 (Sep), ECJ.

8 Environmental Protection Act 1990 s 78X(1)(a) (as added: see note 1). As to modifications of s 78X(1), (2) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 16.

9 Environmental Protection Act 1990 s 78X(1)(b) (as added: see note 1). As from a day to be appointed, s 78X(1)(b) is substituted so as to refer to 'significant' pollution of such waters being caused or a 'significant' possibility of such pollution being caused: see s 78X(1)(b) (prospectively substituted by the Water Act 2003 s 86(1), (6)(a)(i)). At the date at which this volume states the law no such day had been appointed. See note 8.

10 See note 1.

11 Environmental Protection Act 1990 s 78X(1) (as added: see note 1). As from a day to be appointed, s 78X(1) is amended so as to refer to 'significant' pollution of controlled waters being caused or a 'significant' possibility of such harm or pollution being caused: see s 78X(1) (prospectively amended by the Water Act 2003 s 86(1), (6)(a)(ii)). At the date at which this volume states the law no such day had been appointed. See note 8.

12 See note 1.

13 Environmental Protection Act 1990 s 78X(2)(a) (as added: see note 1). Where this provision applies, any reference (except in this provision) to land within the area of a local authority or to the local authority in whose area any land is situated is to be construed accordingly: s 78X(2)(b) (as so added). As from a day to be appointed, s 78X(2) is amended so as to refer to 'significant' pollution of controlled waters being caused or a 'significant' possibility of such harm or pollution being caused: see s 78X(2) (prospectively amended by the Water Act 2003 s 86(1), (6)(b)). At the date at which this volume states the law no such day had been appointed. See note 8.

14 Environmental Protection Act 1990 s 78X(2) (as added: see note 1). See note 8.

15 Ie by virtue of the Environmental Protection Act 1990 s 78C(7) or s 78D(6): see PARAS 763, 765.

16 Environmental Protection Act 1990 s 78A(1), (3)(a) (as added: see note 1). See note 3.

17 Ie under the Environmental Protection Act 1990 s 78Q(4): see PARA 779.

18 Environmental Protection Act 1990 s 78A(1), (3)(b) (as added: see note 1).

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762. Identification of contaminated land.

Every local authority¹ must cause its area to be inspected from time to time² for the purpose:

- 1789 (1) of identifying contaminated land³; and
- 1790 (2) of enabling the authority to decide whether any such land is land which is required to be designated as a special site⁴.

In performing these functions a local authority must act in accordance with any guidance issued⁵ for the purpose by the Secretary of State⁶.

If a local authority identifies any contaminated land in its area, it must give notice⁷ of that fact to:

- 1791 (a) the Environment Agency⁸;
- 1792 (b) the owner⁹ of the land¹⁰;
- 1793 (c) any person who appears to the authority to be in occupation of the whole or any part of the land¹¹; and
- 1794 (d) each person who appears to the authority to be an appropriate person¹².

Any notice so given must state by virtue of which of heads (a) to (d) above it is given¹³.

If, at any time after a local authority has given any person a notice pursuant to head (d) above in respect of any land, it appears to the enforcing authority¹⁴ that another person is an appropriate person, the enforcing authority must give notice to that other person:

- 1795 (i) of the fact that the local authority has identified the land in question as contaminated land¹⁵; and
- 1796 (ii) that he appears to the enforcing authority to be an appropriate person¹⁶.

1 As to the meaning of 'local authority' see PARA 99.

2 Environmental Protection Act 1990 s 78B(1) (s 78B added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1.

As to modifications of s 78B(1) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 6.

3 Environmental Protection Act 1990 s 78B(1)(a) (as added: see note 2). See note 2. As to the meaning of 'contaminated land' see PARA 761.

4 Environmental Protection Act 1990 s 78B(1)(b) (as added: see note 2). See note 2. As to the meaning of 'required to be designated as a special site' see PARA 763 note 3; and as to the meaning of 'special site' see PARA 761.

5 Ie in accordance with the Environmental Protection Act 1990 s 78YA: see PARA 786.

6 Environmental Protection Act 1990 s 78B(2) (as added: see note 2). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

- 7 Environmental Protection Act 1990 s 78B(3) (as added: see note 2). 'Notice' means notice in writing: s 78A(1), (9) (as so added).
- 8 Environmental Protection Act 1990 s 78B(3)(a) (as added: see note 2). As to the Environment Agency see PARAS 68 et seq, 761 note 6.
- 9 'Owner', in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rackrent of the land, or, where the land is not let at a rackrent, would be so entitled if it were so let: Environmental Protection Act 1990 s 78A(1), (9) (as added: see note 2).
- 10 Environmental Protection Act 1990 s 78B(3)(b) (as added: see note 2).
- 11 Environmental Protection Act 1990 s 78B(3)(c) (as added: see note 2).
- 12 Environmental Protection Act 1990 s 78B(3)(d) (as added: see note 2). As to the meaning of 'appropriate person' see PARA 767 note 1.
- 13 Environmental Protection Act 1990 s 78B(3) (as added: see note 2).
- 14 As to the meaning of 'enforcing authority' see PARA 761 note 6.
- 15 Environmental Protection Act 1990 s 78B(4)(a) (as added: see note 2).
- 16 Environmental Protection Act 1990 s 78B(4)(b) (as added: see note 2).

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763. Identification and designation of special sites.

If at any time it appears to a local authority¹ that any contaminated land² in its area might be land which is required to be designated as a special site³, the authority:

- 1797 (1) must decide whether or not the land is land which is required to be so designated⁴; and
- 1798 (2) if the authority decides that the land is land which is required to be so designated, must give notice⁵ of that decision to the relevant persons⁶.

For these purposes, the 'relevant persons' at any time in the case of any land are the persons who at that time fall within heads (a) to (d) below⁷, that is to say:

- 1799 (a) the Environment Agency⁸;
- 1800 (b) the owner⁹ of the land¹⁰;
- 1801 (c) any person who appears to the local authority concerned to be in occupation of the whole or any part of the land¹¹; and
- 1802 (d) each person who appears to that authority to be an appropriate person¹².

If at any time the Environment Agency considers that any contaminated land is land which is required to be designated as a special site, the Environment Agency may give notice of that fact to the local authority in whose area the land is situated¹³. Where such a notice is given to a local authority, the authority must decide whether the land in question:

- 1803 (i) is land which is required to be designated as a special site¹⁴; or
- 1804 (ii) is not land which is required to be so designated¹⁵,

and must give notice of that decision to the relevant persons¹⁶.

Where a local authority makes a decision falling within head (2) or head (i) above, the decision takes effect¹⁷ on the day after whichever of the following events first occurs¹⁸, that is to say:

- 1805 (A) the expiration of the period of 21 days beginning with the day on which the notice required by virtue of head (2) above or, as the case may be, head (i) above is given to the Environment Agency¹⁹; or
- 1806 (B) if the appropriate agency gives notification²⁰ to the local authority in question that it agrees with the decision, the giving of that notification²¹.

Where a decision takes effect by virtue of these provisions, the local authority must give notice of that fact to the relevant persons²². Where a decision that any land is land which is required to be designated as a special site takes effect in accordance with these provisions²³, the notice given under head (2) above or, as the case may be, head (i) above has effect, as from the time when the decision takes effect, as the designation of that land as such a site²⁴.

¹ As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'contaminated land' see PARA 761.

3 Environmental Protection Act 1990 s 78C(1) (ss 78A, 78C, 78X added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1. As to the meaning of 'special site' see PARA 761.

For the purposes of Pt IIA, land is required to be designated as a special site if, and only if, it is land of a description prescribed for the purposes of s 78C(8): ss 78A(1), (9), 78C(8) (as so added). 'Prescribed' means prescribed by regulations: s 78A(1), (9) (as so added). 'Regulations' means regulations made by the Secretary of State: s 78A(1), (9) (as so added). Regulations may make different provision for different cases or circumstances (s 78X(5) (as so added)), and regulations under s 78C(8) may also make different provision for different areas or localities and may, in particular, describe land by reference to the area or locality in which it is situated (s 78C(9) (as so added)). Without prejudice to the generality of his power to prescribe any description of land for the purposes of s 78C(8), the Secretary of State, in deciding whether to prescribe a particular description of contaminated land for those purposes, may, in particular, have regard to:

95 (1) whether land of the description in question appears to him to be land which is likely to be in such a condition, by reason of substances in, on or under the land that: (a) serious harm would or might be caused; or (b) serious pollution of controlled waters would be, or would be likely to be, caused (s 78C(10)(a) (as so added)); or

96 (2) whether the Environment Agency is likely to have expertise in dealing with the kind of significant harm, or pollution of controlled waters, by reason of which land of the description in question is contaminated land (s 78C(10)(b) (as so added)).

As to the meaning of 'substance' see PARA 761 note 3. As to the meaning of 'harm' see PARA 761 note 4. As to what constitutes significant harm see PARA 761 note 4. As to the meanings of 'pollution of controlled waters' and 'controlled waters' see PARA 761 note 6. As to the Environment Agency see PARAS 68 et seq, 761 note 6. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

As to modifications of s 78C(10) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 7.

As to the regulations made under the Environmental Protection Act 1990 s 78C(8)-(10) see the Contaminated Land (England) Regulations 2006, SI 2006/1380; and PARA 764. In relation to Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989 (amended by SI 2007/3538).

4 Environmental Protection Act 1990 s 78C(1)(a) (as added: see note 3). Before making such a decision in any particular case, a local authority must request the advice of the Environment Agency, and in making its decision must have regard to any advice given by the Environment Agency in response to the request: s 78C(3) (as so added).

5 As to the meaning of 'notice' see PARA 762 note 7.

6 Environmental Protection Act 1990 s 78C(1)(b) (as added: see note 3).

7 Environmental Protection Act 1990 s 78C(2) (as added: see note 3).

8 Environmental Protection Act 1990 s 78C(2)(a) (as added: see note 3).

9 As to the meaning of 'owner' see PARA 762 note 9.

10 Environmental Protection Act 1990 s 78C(2)(b) (as added: see note 3).

11 Environmental Protection Act 1990 s 78C(2)(c) (as added: see note 3).

12 Environmental Protection Act 1990 s 78C(2)(d) (as added: see note 3). As to the meaning of 'appropriate person' see PARA 767 note 1.

13 Environmental Protection Act 1990 s 78C(4) (as added: see note 3).

14 Environmental Protection Act 1990 s 78C(5)(a) (as added: see note 3).

15 Environmental Protection Act 1990 s 78C(5)(b) (as added: see note 3).

16 Environmental Protection Act 1990 s 78C(5) (as added: see note 3). As to the meaning of 'relevant persons' see the text and notes 7-12.

- 17 le subject to the Environmental Protection Act 1990 s 78D: see PARA 765.
- 18 Environmental Protection Act 1990 s 78C(6) (as added: see note 3).
- 19 Environmental Protection Act 1990 s 78C(6)(a) (as added: see note 3).
- 20 'Notification' means notification in writing: Environmental Protection Act 1990 s 78A(1), (9) (as added: see note 3).
- 21 Environmental Protection Act 1990 s 78C(6)(b) (as added: see note 3).
- 22 Environmental Protection Act 1990 s 78C(6) (as added: see note 3). As to the meaning of 'relevant persons' see the text and notes 7-12.
- 23 le the Environmental Protection Act 1990 s 78C(6): see the text and notes 17-22.
- 24 Environmental Protection Act 1990 s 78C(7) (as added: see note 3).

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764. Land required to be designated as a special site.

Contaminated land¹ of the following descriptions is prescribed in relation to England² as land required to be designated as a special site³:

- 1807 (1) certain land affecting controlled waters⁴;
- 1808 (2) land which is contaminated land by reason of waste acid tars in, on or under the land⁵;
- 1809 (3) land on which any of the following activities have been carried on at any time: (a) the purification (including refining) of crude petroleum or of oil extracted from petroleum, shale or any other bituminous substance except coal⁶; or (b) the manufacture or processing of explosives⁷;
- 1810 (4) land on which a prescribed process⁸ designated for central control⁹ has been or is being carried on under an authorisation¹⁰ where the process does not comprise solely things being done which are required by way of remediation¹¹;
- 1811 (5) land on which an activity has been or is being carried on in a Part A(1) installation or by means of Part A(1) mobile plant under a permit where the activity does not comprise solely things being done which are required by way of remediation¹²;
- 1812 (6) land within a nuclear site¹³;
- 1813 (7) land owned or occupied by or on behalf of the Secretary of State for Defence, the Defence Council, an international headquarters or defence organisation¹⁴, or the service authority of a visiting force¹⁵, being land used for naval, military or air force purposes¹⁶;
- 1814 (8) land on which the manufacture, production or disposal of:
 - 175 140. (a) chemical weapons¹⁷;
 - 141. (b) certain biological agents or toxins¹⁸; or
 - 142. (c) certain weapons, equipment or means of delivery¹⁹,
- 176 1815 has been carried on at any time²⁰;
- 1816 (9) land comprising premises which are or were designated by the Secretary of State by an order relating to arrangements for development of nuclear devices²¹;
- 1817 (10) certain land held for the benefit of Greenwich Hospital²²;
- 1818 (11) land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land²³; and
- 1819 (12) land which: (a) is adjoining or adjacent to land of a description specified in heads (2) to (11) above; and (b) is contaminated land by virtue of substances which appear to have escaped from land of such a description²⁴.

1 As to the meaning of 'contaminated land' see PARA 761.

2 Ie for the purposes of the Environmental Protection Act 1990 s 78C(8): see PARA 763.

As to the descriptions of land prescribed in relation to Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, regs 2, 3 (reg 2 amended by SI 2007/3538).

3 As to the meaning of 'special site' see PARA 761.

4 The land to which the Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 3 applies: reg 2(1)(a). As to the meaning of 'controlled waters' see PARA 761 note 6.

Regulation 3 applies to land where: (1) controlled waters which are, or are intended to be, used solely for the supply of drinking water for human consumption are being affected by land and, as a result, require a treatment process or a change in such a process to be applied to those waters before use, so as to be regarded as wholesome within the meaning of the Water Industry Act 1991 Pt III (ss 37-93) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 373); (2) controlled waters are being affected by the land and, as a result, those waters do not meet or are not likely to meet the criterion for classification applying to the relevant description of waters specified in regulations made under the Water Resources Act 1991 s 82 (see PARA 330); or (3) controlled waters are being affected by the land and (a) any of the substances by reason of which the pollution of waters is being or is likely to be caused falls within any of the families or groups of substances listed in the Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 1 para 1; and (b) the waters, or any part of the waters, are contained within underground strata which comprise wholly or partly any of the formations of rocks listed in Sch 1 para 2: reg 3. The families or groups of substances referred to above are: organohalogen compounds and substances which may form such compounds in the aquatic environment; organophosphorus compounds; organotin compounds; substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment; mercury and its compounds; cadmium and its compounds; mineral oil and other hydrocarbons; cyanides: Sch 1 para 1. The formations of rocks referred to above are: Pleistocene Norwich Crag; Upper Cretaceous Chalk; Lower Cretaceous Sandstones; Upper Jurassic Corallian; Middle Jurassic Limestones; Lower Jurassic Cotteswold Sands; Permo-Triassic Sherwood Sandstone Group; Upper Permian Magnesian Limestone; Lower Permian Penrith Sandstone; Lower Permian Collyhurst Sandstone; Lower Permian Basal Breccias, Conglomerates and Sandstones; Lower Carboniferous Limestones: Sch 1 para 2.

5 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(b). For these purposes, 'waste acid tars' are tars which: (1) contain sulphuric acid; (2) were produced as a result of the refining of benzole, used lubricants or petroleum; and (3) are or were stored on land used as a retention basin for the disposal of such tars: reg 2(2).

6 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(c)(i).

7 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(c)(ii).

8 As to the meaning of 'prescribed process' see PARA 159 note 2; definition applied by the Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(3).

9 The reference to designation for central control is a reference to designation under the Environmental Protection Act 1990 s 2(4) (prospectively repealed) (see PARA 159): Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(3).

10 As to the meaning of 'authorisation' see PARA 159 note 3; definition applied by the Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(3).

11 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(d). As to the meaning of 'remediation' under the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) see PARA 766. As to the Environmental Protection Act 1990 Pt IIA generally see PARA 761 note 1.

12 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(e). As to the meanings of 'Part A(1) installation', 'Part A(1) mobile plant' and 'permit' (ie 'environmental permit') see PARAS 663 note 1, 664; definitions applied by the Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(4) (substituted by SI 2007/3538).

13 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(f). For these purposes, 'nuclear site' means: (1) any site in respect of which, or part of which, a nuclear site licence is for the time being in force; or (2) any site in respect of which, or part of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not come to an end: reg 2(5). 'Nuclear site licence', 'licensee' and 'period of responsibility' have the meanings given by the Nuclear Installations Act 1965 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1357 et seq): Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(6).

14 'International headquarters' and 'defence organisation' mean, respectively, any international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 150): Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(7). As to the Secretary of State for Defence see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 441; and as to the Defence Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** PARA 444.

15 'Service authority' and 'visiting force' have the same meanings as in the Visiting Forces Act 1952 Pt I (ss 1-12) (see **ARMED FORCES** vol 2(2) (Reissue) PARAS 140, 143): Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(8).

16 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(g). For these purposes, land used for residential purposes or by the Navy, Army and Air Force Institutes (NAAFI) is to be treated as land used for naval, military or air force purposes only if the land forms part of a base occupied for naval, military or air force purposes: reg 2(7).

17 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(h)(i). 'Chemical weapon' has the same meaning as in the Chemical Weapons Act 1996 s 1 (see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 474): Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(9).

18 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(h)(ii). This provision refers to any biological agent or toxin which falls within the Biological Weapons Act 1974 s 1(1)(a) (see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 469): Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(h)(ii).

19 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(h)(iii). This provision refers to any weapon, equipment or means of delivery which falls within the Biological Weapons Act 1974 s 1(1)(b) (see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 469): Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(h)(iii).

20 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(h).

21 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(i). This provision refers to an order made under the Atomic Weapons Establishment Act 1991 s 1(1) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1387): Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(i). As to the Secretary of State see PARA 58.

22 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(j). This provision refers to land to which the Armed Forces Act 1996 s 30 applies: Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(j).

23 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(k).

24 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 2(1)(l).

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765. Referral of special site decisions to the Secretary of State.

In any case where:

- 1820 (1) a local authority¹ gives notice of a decision² to the Environment Agency³;
but
1821 (2) before the expiration of the period of 21 days beginning with the day on which that notice is so given, the Environment Agency gives the local authority notice that it disagrees with the decision, together with a statement of its reasons for disagreeing⁴,

the authority must refer the decision to the Secretary of State and must send to him a statement of its reasons for reaching the decision⁵.

Where a local authority refers a decision to the Secretary of State, it must give notice of that fact to the relevant persons⁶.

Where a decision of a local authority is referred to the Secretary of State, he may confirm or reverse the decision with respect to the whole or any part of the land to which it relates⁷. He must give notice of his decision on the referral to the relevant persons and to the local authority⁸.

Where a decision of a local authority is referred to the Secretary of State, the decision does not take effect until the day after that on which the Secretary of State gives notice of his decision on the referral to the persons mentioned above⁹, and then takes effect as confirmed or reversed by him¹⁰. Where a decision which takes effect in accordance with this provision is to the effect that at least some land is land which is required to be designated as a special site¹¹, the notice of the decision on the referral¹² has effect, as from the time when the decision takes effect, as the designation of that land as such a site¹³.

1 As to the meaning of 'local authority' see PARA 99.

2 I.e. pursuant to the Environmental Protection Act 1990 s 78C(1)(b) (see PARA 763 head (2)) or s 78C(5)(b) (see PARA 763 head (ii)). As to the meaning of 'notice' see PARA 762 note 7.

3 Environmental Protection Act 1990 s 78D(1)(a) (s 78D added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1. As to the Environment Agency see PARAS 68 et seq, 761 note 6.

4 Environmental Protection Act 1990 s 78D(1)(b) (as added: see note 3). Where the Environment Agency gives notice to a local authority under s 78D(1)(b), it must also send to the Secretary of State a copy of the notice and of the statement given under that provision: s 78D(2) (as so added). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

5 Environmental Protection Act 1990 s 78D(1) (as added: see note 3).

6 Environmental Protection Act 1990 s 78D(3) (as added: see note 3). As to the meaning of 'relevant persons' see PARA 763; definition applied by s 78D(7) (as so added).

7 Environmental Protection Act 1990 s 78D(4)(a) (as added: see note 3).

8 Environmental Protection Act 1990 s 78D(4)(b) (as added: see note 3).

- 9 le the notice required by the Environmental Protection Act 1990 s 78D(4): see the text and note 8.
- 10 Environmental Protection Act 1990 s 78D(5) (as added: see note 3).
- 11 As to land which is required to be designated as a special site see PARA 763 note 3. As to the meaning of 'special site' see PARA 761.
- 12 le the notice given under the Environmental Protection Act 1990 s 78D(4)(b): see the text and note 8.
- 13 Environmental Protection Act 1990 s 78D(6) (as added: see note 3).

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766. Duty of enforcing authority to require remediation of contaminated land etc.

In any case where:

- 1822 (1) any land has been designated¹ as a special site²; or
- 1823 (2) a local authority³ has identified any contaminated land⁴ (other than a special site) in its area⁵,

the enforcing authority⁶ is to serve⁷ on each person who is an appropriate person⁸ a notice (a 'remediation notice')⁹ specifying what that person is to do by way of remediation¹⁰ and the periods within which he is required to do each of the things so specified¹¹. Different remediation notices requiring the doing of different things by way of remediation may be served on different persons in consequence of the presence of different substances¹² in, on or under any land or waters¹³. Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, the remediation notice served on each of them must state the proportion¹⁴ of the cost of doing that thing which each of them respectively is liable to bear¹⁵. The enforcing authority must, at the same time as it serves a remediation notice, send a copy of it to each of the following persons, not being a person on whom the notice is to be served: (a) any person who was required to be consulted¹⁶ before service of the notice¹⁷; (b) where the local authority is the enforcing authority, the Environment Agency¹⁸; and (c) where the Environment Agency is the enforcing authority, the local authority in whose area the contaminated land in question is situated¹⁹.

The only things by way of remediation which the enforcing authority may do, or require to be done, under or by virtue of these provisions are things which it considers reasonable²⁰, having regard to: (i) the cost which is likely to be involved²¹; and (ii) the seriousness of the harm, or pollution of controlled waters, in question²².

In determining for any purpose of these provisions:

- 1824 (A) what is to be done (whether by an appropriate person, the enforcing authority or any other person) by way of remediation in any particular case²³;
- 1825 (B) the standard to which any land is, or waters are, to be remediated pursuant to the notice²⁴; or
- 1826 (C) what is, or is not, to be regarded as reasonable²⁵,

the enforcing authority must have regard to any guidance issued for the purpose by the Secretary of State²⁶.

1 le by virtue of the Environmental Protection Act 1990 s 78C(7) (see PARA 763) or s 78D(6) (see PARA 764).

2 Environmental Protection Act 1990 s 78E(1)(a) (ss 78A, 78E added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1. As to the meaning of 'special site' see PARA 761.

3 As to the meaning of 'local authority' see PARA 99.

4 As to the meaning of 'contaminated land' see PARA 761.

5 Environmental Protection Act 1990 s 78E(1)(b) (as added: see note 2).

6 As to the meaning of 'enforcing authority' see PARA 761 note 6.

7 In accordance with such procedure as may be prescribed and subject to the Environmental Protection Act 1990 ss 78F-78YC (see PARAS 767-787). 'Prescribed' means prescribed by regulations: s 78A(1), (9) (as added: see note 2). As to the meaning of 'regulations' see PARA 763 note 3. As to the making of regulations see PARA 763 note 3. As to the regulations made for these purposes see note 11.

8 As to the meaning of 'appropriate person' see PARA 767 note 1.

9 Environmental Protection Act 1990 ss 78A(1), (9), 78E(1) (as added: see note 2).

10 'Remediation' means:

97 (1) the doing of anything for the purpose of assessing the condition of: (a) the contaminated land in question; (b) any controlled waters affected by that land; or (c) any land adjoining or adjacent to that land (Environmental Protection Act 1990 s 78A(1), (7)(a) (as added: see note 2));

98 (2) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose: (a) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or (b) of restoring the land or waters to their former state (s 78A(1), (7)(b) (as so added)); or

99 (3) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters (s 78A(1), (7)(c) (as so added)).

As from a day to be appointed, s 78A(7)(b) (see head (2) above) is amended so as to refer to 'significant' pollution: see s 78A(7)(b) (prospectively amended by the Water Act 2003 s 86(1), (2)(d)). At the date at which this volume states the law no such day had been appointed. Cognate expressions (ie for 'remediation') must be construed accordingly: Environmental Protection Act 1990 s 78A(1), (7) (as so added). As to the meaning of 'controlled waters' see PARA 761 note 6. As to when controlled waters are affected by contaminated land see PARA 761 note 6. As to the meaning of 'pollution of controlled waters' see PARA 761 note 6. As to the meaning of 'harm' see PARA 761 note 4. As to what constitutes significant harm see PARA 761 note 4.

11 Environmental Protection Act 1990 s 78E(1) (as added: see note 2). Regulations may make provision for or in connection with the form or content of remediation notices (s 78E(6)(a) (as so added)); or any steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a remediation notice (s 78E(6)(b) (as so added)).

A remediation notice must state, in addition to the matters required by the Environmental Protection Act 1990 s 78E(1) and s 78E(3) (see the text and note 15):

100 (1) the name and address of the person on whom the notice is served (Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 4(1)(a));

101 (2) the location and extent of the contaminated land to which the notice relates (the 'contaminated land in question'), sufficient to enable it to be identified whether by reference to a plan or otherwise (reg 4(1)(b));

102 (3) the date of any notice which was given under the Environmental Protection Act 1990 s 78B (see PARA 762) to the person on whom the remediation notice is served identifying the contaminated land in question as contaminated land (Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 4(1)(c));

103 (4) whether the enforcing authority considers the person on whom the notice is served is an appropriate person by reason of: (a) having caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is contaminated land, to be in, on or under that land; or (b) being the owner or occupier of the contaminated land in question (reg 4(1)(d));

104 (5) particulars of the significant harm or pollution of controlled waters by reason of which the contaminated land in question is contaminated land (reg 4(1)(e));

- 105 (6) the substances by reason of which the contaminated land in question is contaminated land and, if any of the substances have escaped from other land, the location of that other land (reg 4(1)(f));
- 106 (7) the enforcing authority's reasons for its decisions as to the things by way of remediation that the appropriate person is required to do, which must show how any guidance issued by the Secretary of State under the Environmental Protection Act 1990 s 78E(5) (see the text and notes 23-26) has been applied (Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 4(1)(g));
- 107 (8) where two or more persons are appropriate persons in relation to the contaminated land in question: (a) that this is the case; (b) the name and address of each such person; and (c) the thing by way of remediation for which each such person bears responsibility (reg 4(1)(h));
- 108 (9) where two or more persons would, apart from the Environmental Protection Act 1990 s 78F(6) (see PARA 767), be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority's reasons for its determination as to whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing, which must show how any guidance issued by the Secretary of State under s 78F(6) has been applied (Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 4(1)(i));
- 109 (10) where the remediation notice is required by the Environmental Protection Act 1990 s 78E(3) (see the text and notes 14-15) to state the proportion of the cost of a thing which is to be done by way of remediation which each of the appropriate persons in relation to that thing is liable to bear, the enforcing authority's reasons for the proportion which it has determined, which must show how any guidance issued by the Secretary of State under s 78F(7) (see PARA 767) has been applied (Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 4(1)(j));
- 110 (11) where known to the enforcing authority, the name and address of: (a) the owner of the contaminated land in question; and (b) any person who appears to the enforcing authority to be in occupation of the whole or any part of the contaminated land in question (reg 4(1)(k));
- 111 (12) where known to the enforcing authority, the name and address of any person whose consent is required under the Environmental Protection Act 1990 s 78G(2) (see PARA 768) before any thing required by the remediation notice may be done (Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 4(1)(l));
- 112 (13) where the notice is to be served in reliance on the Environmental Protection Act 1990 s 78H(4) (see PARA 769), that it appears to the enforcing authority that the contaminated land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused (Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 4(1)(m));
- 113 (14) that a person on whom a remediation notice is served may be guilty of an offence for failure, without reasonable excuse, to comply with any of the requirements of the notice (reg 4(1)(n));
- 114 (15) the penalties which may be applied on conviction for such an offence (reg 4(1)(o));
- 115 (16) the name and address of the enforcing authority serving the notice (reg 4(1)(p)); and
- 116 (17) the date of the notice (reg 4(1)(q)).

A remediation notice must explain: (i) that a person on whom it is served has a right of appeal against the notice under the Environmental Protection Act 1990 s 78L (see PARA 772); (ii) how, within what period and on what grounds an appeal may be made; and (iii) that a notice is suspended, where an appeal is duly made, until the final determination or abandonment of the appeal: Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 4(2). As to the similar provisions applying in Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 4.

As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

12 As to the meaning of 'substance' see PARA 761 note 3.

13 Environmental Protection Act 1990 s 78E(2) (as added: see note 2).

As to modifications of s 78E(2), (4), (5) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 8.

14 le determined under the Environmental Protection Act 1990 s 78F(7): see PARA 767.

15 Environmental Protection Act 1990 s 78E(3) (as added: see note 2).

16 le under the Environmental Protection Act 1990 s 78G(3) (see PARA 768) or under s 78H(1) (see PARA 769).

17 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 5(1)(a), (b). As to the similar provisions applying in Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 5.

18 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 5(1)(c). See note 17.

19 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 5(1)(d). Where it appears to the enforcing authority that the contaminated land in question is in such a condition by reason of substances in, on or under it that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused, the enforcing authority must send any copies of the notice pursuant to reg 5(1) as soon as practicable after service of the notice: reg 5(2). See note 17.

20 Environmental Protection Act 1990 s 78E(4) (as added: see note 2). See note 13.

21 Environmental Protection Act 1990 s 78E(4)(a) (as added: see note 2). See note 13.

22 Environmental Protection Act 1990 s 78E(4)(b) (as added (see note 2)). See note 13. As from a day to be appointed, s 78E(4)(b) is amended in head (ii) in the text so as to refer to 'or of the pollution of controlled waters': see s 78E(4)(b) (prospectively amended by the Water Act 2003 s 86(1), (4)). At the date at which this volume states the law no such day had been appointed.

23 Environmental Protection Act 1990 s 78E(5)(a) (as added: see note 2). See note 13.

24 Environmental Protection Act 1990 s 78E(5)(b) (as added: see note 2). See note 13.

25 le reasonable for the purposes of the Environmental Protection Act 1990 s 78E(4) (see the text and notes 20-22): s 78E(5)(c) (as added: see note 2). See note 13.

26 Environmental Protection Act 1990 s 78E(5) (as added: see note 2). See note 13.

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767. Determination of the appropriate person to bear responsibility for remediation.

The following provisions have effect for the purpose of determining who is the appropriate person¹ to bear responsibility for any particular thing which the enforcing authority² determines is to be done by way of remediation in any particular case³.

Subject to the following provisions, any person, or any of the persons, who caused⁴ or knowingly permitted⁵ the substances⁶, or any of the substances, by reason of which the contaminated land⁷ in question is such land to be in, on or under that land, is an appropriate person⁸. A person is only an appropriate person⁹ in relation to things which are to be done by way of remediation which are to any extent referable to substances which he caused or knowingly permitted to be present in, on or under the contaminated land in question¹⁰.

If no person has, after reasonable inquiry, been found who is an appropriate person¹¹ to bear responsibility for the things which are to be done by way of remediation, the owner¹² or occupier for the time being of the contaminated land in question is an appropriate person¹³. If there are things which are to be done¹⁴ by way of remediation in relation to which no person has, after reasonable inquiry, been found who is an appropriate person¹⁵, the owner or occupier for the time being of the contaminated land in question is an appropriate person in relation to those things¹⁶.

Where two or more persons would, apart from this provision, be appropriate persons in relation to any particular thing which is to be done by way of remediation, the enforcing authority must determine in accordance with guidance issued for the purpose by the Secretary of State whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing¹⁷. Where two or more persons are appropriate persons in relation to any particular thing which is to be done by way of remediation, they are liable to bear the cost of doing that thing in proportions determined by the enforcing authority in accordance with guidance issued for the purpose by the Secretary of State¹⁸.

1 'Appropriate person' means any person who is an appropriate person, determined in accordance with the Environmental Protection Act 1990 s 78F, to bear responsibility for any thing which is to be done by way of remediation in any particular case: s 78A(1), (9) (ss 78A, 78F added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1. As to the meaning of 'remediation' see PARA 766 note 10. As to the 'appropriate person' see also *R (on the application of National Grid Gas plc) v Environment Agency* [2007] UKHL 30, [2007] 3 All ER 877, [2007] 1 WLR 1780; and note 3.

2 As to the meaning of 'enforcing authority' see PARA 761 note 6.

3 Environmental Protection Act 1990 s 78F(1) (as added: see note 1). As to a claim for judicial review of the decision that the claimant gas company was an appropriate person within the Environmental Protection Act 1990 Pt IIA see *R (on the application of National Grid Gas plc) v Environment Agency* [2006] EWHC 1083 (Admin), [2007] 1 All ER 1163, [2006] All ER (D) 241 (May) (although the Parliamentary intention is that the original polluter responsible for the contamination should have primary responsibility, it was held at first instance that where such a polluter company had been dissolved and assets not found that was different from the situation where assets, rights and liabilities had been transferred under a clear chain of statutory provisions ensuring continuity); but the decision was reversed on appeal: [2007] UKHL 30, [2007] 3 All ER 877, [2007] 1 WLR 1780 (the Environmental Protection Act 1990 s 78F is not to be construed so as to include every person, who, by statute, becomes successor to liabilities of actual polluters).

4 Assistance in interpreting the words 'cause' or 'causing' can be found in the cases described below which were decided under similarly worded water pollution legislation. However, some care should be taken: water pollution offences are different in substance, as they are concerned with active entry or discharges in contrast to causing the presence of substances to be in, on or under the affected land. As to pollution of water generally see PARA 270 et seq.

Causation is a question of pure fact, not law (*CPC (UK) Ltd v National Rivers Authority* [1994] Env LR 131, sub nom *R v CPC (UK) Ltd* (1994) Times, 4 August, CA), and is to be given a common sense meaning, there being no need for proof of mens rea (*Alphacell Ltd v Woodward* [1972] AC 824, [1972] 2 All ER 475, HL). An act of God or the act of a third party, even if deliberate or negligent, will not break the chain of causation when, even though unforeseeable in the particular case, such an act was in the generality a normal and familiar fact of life, as opposed to abnormal and extraordinary, the difference being one of fact and degree: *Environment Agency (formerly National Rivers Authority) v Empress Car Co (Abertillery) Ltd* [1999] 2 AC 22, sub nom *Empress Car Co (Abertillery) Ltd v National Rivers Authority* [1998] 1 All ER 481, HL. See also *Environment Agency v Brock plc* [1998] 4 PLR 37, (1998) Times, 26 March, DC; *Southern Water Authority v Pegrum* (1989) 153 JP 581; *A-G's Reference (No 1 of 1994)* [1995] 2 All ER 1007, [1995] 1 WLR 599, CA (more than one person may cause the same pollution by separate acts); *National Rivers Authority v Yorkshire Water Services Ltd* [1995] 1 AC 444, [1995] 1 All ER 225, HL (where the defendant was acquitted on unrelated grounds). A company is vicariously liable for all causative acts or omissions of its employees, whatever their level: *National Rivers Authority v Alfred McAlpine Homes East Ltd* [1994] 4 All ER 286, [1994] Crim LR 760.

5 'Knowingly permits' connotes a failure to prevent the state of affairs in question, with actual or constructive knowledge thereof: see *Schulmans Inc v National Rivers Authority* [1993] Env LR D1-2, DC. This case related to water pollution legislation, as to which see note 4. As to 'knowingly permits' in the context of the Environmental Protection Act 1990 s 78F see *Circular Facilities (London) Ltd v Sevenoaks District Council* [2005] EWHC 865 (Admin), [2005] Env LR 35, [2005] All ER (D) 126 (May). As to 'knowingly permitting' in the context of the Water Resources Act 1991 s 85 (see PARA 291) see *Environment Agency v Biffa Waste Services Ltd* [2006] EWHC 1102 (Admin), [2006] All ER (D) 355 (Mar).

6 As to the meaning of 'substance' see PARA 761 note 3. A person who has caused or knowingly permitted any substance ('substance A') to be in, on or under any land must also be taken for the purposes of these provisions to have caused or knowingly permitted there to be in, on or under that land any substance which is there as a result of a chemical reaction or biological process affecting substance A: Environmental Protection Act 1990 s 78F(9) (as added: see note 1).

As to modifications of s 78F(9) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 9 (substituted by SI 2007/3245).

7 As to the meaning of 'contaminated land' see PARA 761.

8 Environmental Protection Act 1990 s 78F(2) (as added: see note 1). Special exemptions are granted to those acting in certain capacities in insolvency situations: see note 10.

9 Ie by virtue of the Environmental Protection Act 1990 s 78F(2): see the text and notes 4-8.

10 Environmental Protection Act 1990 s 78F(3) (as added: see note 1). A thing which is to be done by way of remediation may be regarded for the purposes of Pt IIA as referable to the presence of any substance notwithstanding that the thing in question would not have to be done: (1) in consequence only of the presence of that substance in any quantity; or (2) in consequence only of the quantity of that substance which any particular person caused or knowingly permitted to be present: s 78F(10) (as so added).

A person acting in a relevant capacity:

117 (a) is not thereby personally liable, under Pt IIA, to bear the whole or any part of the cost of doing any thing by way of remediation, unless that thing is to any extent referable to substances whose presence in, on or under the contaminated land in question is a result of any act done or omission made by him which it was unreasonable for a person acting in that capacity to do or make (s 78X(3)(a) (as so added)); and

118 (b) is not thereby guilty of an offence under or by virtue of s 78M (see PARA 776) unless the requirement which has not been complied with is a requirement to do some particular thing for which he is personally liable to bear the whole or any part of the cost (s 78X(3)(b) (as so added)).

For these purposes, 'person acting in a relevant capacity' means: (i) a person acting as an insolvency practitioner, within the meaning of the Insolvency Act 1986 s 388 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 43) (including that provision as it applies in relation to an insolvent partnership by virtue of any order made under s 421: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 823-824); (ii) the official receiver acting in a capacity in which he would be regarded as acting as an

insolvency practitioner within the meaning of s 388 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 43) if s 388(5) were disregarded; (iii) the official receiver acting as receiver or manager; (iv) a person acting as a special manager under s 177 or s 370 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 236 et seq; **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 496 et seq; **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 971); (v) a person acting as a receiver or receiver and manager under or by virtue of any enactment, or by virtue of his appointment as such by an order of a court or by any other instrument: Environmental Protection Act 1990 s 78X(4) (as so added).

11 Ie by virtue of the Environmental Protection Act 1990 s 78F(2): see the text and notes 4-8.

12 As to the meaning of 'owner' see PARA 762 note 9.

13 Environmental Protection Act 1990 s 78F(4) (as added: see note 1).

As to identifying the appropriate person in the context of statutory undertakers and local authorities and the transfer of liabilities across many different corporate identities see generally *R (on the application of National Grid Gas plc) v Environment Agency* [2007] UKHL 30, [2007] 3 All ER 877; and note 3.

14 Ie in consequence of the Environmental Protection Act 1990 s 78F(3): see the text and note 10.

15 Ie by virtue of the Environmental Protection Act 1990 s 78F(2): see the text and notes 4-8.

16 Environmental Protection Act 1990 s 78F(5) (as added: see note 1).

17 Environmental Protection Act 1990 s 78F(6) (as added: see note 1). Any guidance issued for the purposes of s 78F(6) must be issued in accordance with s 78YA (see PARA 786): s 78F(8) (as so added). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

18 Environmental Protection Act 1990 s 78F(7) (as added: see note 1). Any guidance issued for the purposes of s 78F(7) must be issued in accordance with s 78YA (see PARA 786): s 78F(8) (as so added). As to the Secretary of State's guidance see Department of the Environment, Transport and the Regions (DETR) Circular 2/2000 (Contaminated Land), Annex 3.

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768. Grant of, and compensation for, rights of entry etc.

A remediation notice¹ may require an appropriate person² to do things by way of remediation³, notwithstanding that he is not entitled to do those things⁴. Any person whose consent is required before any thing required by a remediation notice may be done must grant, or join in granting, such rights in relation to any of the relevant land or waters⁵ as will enable the appropriate person to comply with any requirements imposed by the remediation notice⁶. Before serving a remediation notice, the enforcing authority⁷ must reasonably endeavour to consult every person who appears to the authority:

- 1827 (1) to be the owner⁸ or occupier of any of the relevant land or waters⁹; and
- 1828 (2) to be a person who might be required¹⁰ to grant, or join in granting, any rights¹¹,

concerning the rights which that person may be required to grant¹².

A person who grants, or joins in granting, any rights¹³ is entitled, on making an application within such period as may be prescribed¹⁴ and in such manner as may be prescribed to such person as may be prescribed, to be paid by the appropriate person compensation of such amount as may be determined in such manner as may be prescribed¹⁵.

1 As to the meaning of 'remediation notice' see PARA 766.

2 As to the meaning of 'appropriate person' see PARA 767 note 1.

3 As to the meaning of 'remediation' see PARA 766 note 10.

4 Environmental Protection Act 1990 s 78G(1) (ss 78A, 78G added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1.

5 For these purposes, 'relevant land or waters' means: (1) the contaminated land in question; (2) any controlled waters affected by that land; or (3) any land adjoining or adjacent to that land or those waters: Environmental Protection Act 1990 s 78G(7) (as added: see note 4). As to the meaning of 'contaminated land' see PARA 761. As to the meaning of 'controlled waters', and as to when controlled waters are affected by contaminated land, see PARA 761 note 6.

As to modifications of s 78G(2), (3), (4), (7) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 10.

6 Environmental Protection Act 1990 s 78G(2) (as added: see note 4). See note 5.

7 As to the meaning of 'enforcing authority' see PARA 761 note 6.

8 As to the meaning of 'owner' see PARA 762 note 9.

9 Environmental Protection Act 1990 s 78G(3)(a) (as added: see note 4). See note 5.

10 Ie by the Environmental Protection Act 1990 s 78G(2): see the text and notes 5-6.

11 Environmental Protection Act 1990 s 78G(3)(b) (as added: see note 4). See note 5.

12 Environmental Protection Act 1990 s 78G(3) (as added: see note 4). Section 78G(3) does not preclude the service of a remediation notice in any case where it appears to the enforcing authority that the contaminated

land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters, being caused: s 78G(4) (as so added). As to the meaning of 'substance' see PARA 761 note 3; as to the meaning of 'harm' see PARA 761 note 4; and as to the meaning of 'pollution of controlled waters' see PARA 761 note 6. See note 5.

13 le pursuant to the Environmental Protection Act 1990 s 78G(2): see the text and notes 5-6.

14 'Prescribed' means prescribed by regulations: Environmental Protection Act 1990 s 78A(1), (9) (as added: see note 4). As to the meaning of 'regulations' see PARA 763 note 3. As to the making of regulations see PARA 763 note 3. An application must be made within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on whichever is the latest of the following periods: (1) 12 months after the date of the grant of those rights; (2) where an appeal is made against a remediation notice in respect of which the rights in question have been granted, and the notice is of no effect by virtue of the Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 12 (see PARA 772), 12 months after the date of the final determination or abandonment of the appeal; or (3) six months after the date on which the rights were first exercised: reg 6(a), Sch 2 para 2. As to the similar provisions applying in Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 6, Sch 2 para 2.

15 Environmental Protection Act 1990 s 78G(5) (as added: see note 4). Without prejudice to the generality of the regulations that may be made by virtue of s 78G(5), regulations may make such provision in relation to compensation under s 78G as may be made by regulations by virtue of s 35A(4) (repealed) in relation to compensation under that provision: s 78G(6) (as so added). The Contaminated Land (England) Regulations 2006, SI 2006/1380, contain provision for prescribing the manner in which, and the person to whom, an application for compensation may be made (see reg 6(b), Sch 2); and for prescribing the manner in which the amount of such compensation is to be determined and for making further provision relating to such compensation (reg 6(c), Sch 2).

An application must be made in writing and delivered at or sent by pre-paid post to the last known address for correspondence of the appropriate person to whom the rights were granted: Sch 2 para 3(1). The application must contain, or be accompanied by: (1) a copy of the grant of rights in respect of which the grantor is applying for compensation, and of any plans attached to that grant; (2) a description of the exact nature of any interest in land in respect of which compensation is applied for; and (3) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of heads (a)-(e) below, and showing how the amount applied for under each head has been calculated: Sch 2 para 3(2). 'Grantor' means a person who has granted, or joined in the granting of, any rights pursuant to the Environmental Protection Act 1990 s 78G(2) (see the text and note 6): Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 1. Compensation is payable under the Environmental Protection Act 1990 s 78G for loss and damage of the following descriptions:

- 119 (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 4(a));
- 120 (b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the rights (Sch 2 para 4(b));
- 121 (c) loss or damage, in relation to any relevant interest to which the grantor is entitled, which: (i) is attributable to the grant of the rights or the exercise of them; (ii) does not consist of depreciation in the value of that interest; and (iii) is loss or damage of a kind in respect of which compensation for disturbance, or any other matter not directly based on the value of that interest, is payable on a compulsory acquisition (Sch 2 para 4(c));
- 122 (d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them (Sch 2 para 4(d)); and
- 123 (e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of the rights or the exercise of them (Sch 2 para 4(e)).

'Relevant interest' means an interest in land out of which rights have been granted pursuant to the Environmental Protection Act 1990 s 78G(2): Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 1.

The following provisions have effect for the purpose of assessing the amount to be paid by way of compensation under the Environmental Protection Act 1990 s 78G: Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 5(1). The rules for assessing compensation set out in the Land Compensation Act 1961 s 5 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 718 et seq), so far as applicable and subject to any necessary modifications, have effect for the purpose of assessing any such compensation as they

have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land: Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 5(2). No account is to be taken of any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made on any land in which the grantor is, or was at the time of erection, doing or making, directly or indirectly concerned, if the Upper Tribunal is satisfied that the erection of the building, the doing of the work, the making of the improvement or the alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation: Sch 2 para 5(3) (amended by SI 2009/1307). As to the Upper Tribunal see **ADMINISTRATIVE LAW**. In calculating the amount of any loss under head (e) above, expenditure incurred in the preparation of plans or on other similar preparatory matters must be taken into account: Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 5(4). Where the interest in respect of which compensation is to be assessed is subject to a mortgage, the compensation is to be assessed as if the interest were not subject to the mortgage; and no compensation is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage): Sch 2 para 5(5). Compensation under the Environmental Protection Act 1990 s 78G must include an amount equal to the grantor's reasonable valuation and legal expenses: Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 5(6).

Compensation payable under the Environmental Protection Act 1990 s 78G in respect of an interest which is subject to a mortgage is to be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and must, in either case, be applied by him as if it were proceeds of sale: Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 6(1).

Amounts of compensation determined under these provisions are payable: (A) where the appropriate person and the grantor or mortgagee agree that a single payment is to be made on a specified date, on that date; (B) where the appropriate person and the grantor or mortgagee agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment; and (C) in any other case, subject to any direction of the Upper Tribunal or the court, as soon as reasonably practicable after the amount of the compensation has been finally determined: Sch 2 para 6(2) (amended by SI 2009/1307).

Any question of the application of the Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 5(3) or of disputed compensation must be referred to and determined by the Upper Tribunal: Sch 2 para 6(3) (amended by SI 2009/1307). In relation to the determination of any such question, the Land Compensation Act 1961 s 4 (costs) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720 et seq) applies as if the reference in s 2(1) to s 1 were a reference to the Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 6(3): Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 6(4) (substituted by SI 2009/1307). As to the similar provisions applying in Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, regs 6, Sch 2.

The dates from which interest can accrue on the compensation payable under the Environmental Protection Act 1990 s 78G(5) are as follows: (aa) by virtue of the Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 2 para 4(a), (b) (compensation for rights of entry etc), the date of the depreciation; (bb) by virtue of Sch 2 para 4(c), (d) or (e), the date on which the loss is sustained or the damage is done, or where injurious affection is sustained, the date of the injurious affection; (cc) by virtue of Sch 2 para 5(6), the date on which the expenses become payable: Planning and Compensation Act 1991 s 80, Sch 18 Pt I (entry added by SI 2002/116).

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769. Restrictions and prohibitions on serving remediation notices.

Before serving a remediation notice¹, the enforcing authority² must reasonably endeavour to consult the following³:

- 1829 (1) the person on whom the notice is to be served⁴;
- 1830 (2) the owner⁵ of any land to which the notice relates⁶;
- 1831 (3) any person who appears to that authority to be in occupation of the whole or any part of the land⁷; and
- 1832 (4) any person of such other description as may be prescribed⁸,

concerning what is to be done by way of remediation⁹. Regulations¹⁰ may make provision for, or in connection with, steps to be taken for these purposes¹¹.

No remediation notice may be served on any person by reference to any contaminated land¹² during any of certain specified periods¹³.

The above provisions¹⁴ do not preclude the service of a remediation notice in any case where it appears to the enforcing authority that the land in question is in such a condition, by reason of substances¹⁵ in, on or under the land, that there is imminent danger of serious harm¹⁶, or serious pollution of controlled waters¹⁷, being caused¹⁸.

The enforcing authority must not serve a remediation notice on a person if and so long as any one or more of the following conditions is for the time being satisfied in the particular case¹⁹, that is to say:

- 1833 (a) the authority is satisfied²⁰ that there is nothing by way of remediation which could be specified in a remediation notice served on that person²¹;
- 1834 (b) the authority is satisfied that appropriate things are being, or will be, done by way of remediation without the service of a remediation notice on that person²²;
- 1835 (c) it appears to the authority that the person on whom the notice would be served is the authority itself²³; or
- 1836 (d) the authority is satisfied that the powers conferred on it²⁴ to do what is appropriate by way of remediation are exercisable²⁵.

Where the enforcing authority is precluded²⁶ from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice, the authority must prepare and publish a document (a 'remediation declaration'²⁷) which must record the reasons why the authority would have specified that thing and the grounds on which the authority is satisfied that it is precluded from specifying that thing in such a notice²⁸.

In any case where the enforcing authority is precluded, by virtue of head (b), (c) or (d) above, from serving a remediation notice, the responsible person²⁹ must prepare and publish a document (a 'remediation statement'³⁰) which must record:

- 1837 (i) the things which are being, have been, or are expected to be, done by way of remediation in the particular case³¹;
- 1838 (ii) the name and address of the person who is doing, has done, or is expected to do, each of those things³²; and

- 1839 (iii) the periods within which each of those things is being, or is expected to be, done³³.

A remediation notice may not be served if and to the extent that it appears to the enforcing authority that the powers of the Environment Agency to remedy harm³⁴ may be exercised in relation to:

- 1840 (A) the significant harm (if any)³⁵; and
 1841 (B) the pollution of controlled waters (if any)³⁶,

by reason of which the contaminated land in question is such land³⁷.

If, in a case falling within the provisions relating to removal of unlawfully deposited controlled waste³⁸, the land in question is contaminated land, or becomes such land by reason of the deposit of the controlled waste in question, a remediation notice must not be served in respect of that land by reason of that waste or any consequences of its deposit, if and to the extent that it appears to the enforcing authority that the powers of a waste regulation authority³⁹ or waste collection authority⁴⁰ under those provisions may be exercised in relation to that waste or the consequences of its deposit⁴¹.

No remediation notice may require a person to do anything the effect of which would be to impede or prevent the making of a discharge in pursuance of a consent given under provisions relating to pollution in the Water Resources Act 1991⁴².

1 As to the meaning of 'remediation notice' see PARA 766.

2 As to the meaning of 'enforcing authority' see PARA 761 note 6.

3 Environmental Protection Act 1990 s 78H(1) (ss 78A, 78H, 78YB added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1.

4 Environmental Protection Act 1990 s 78H(1)(a) (as added: see note 3).

5 As to the meaning of 'owner' see PARA 762 note 9.

6 Environmental Protection Act 1990 s 78H(1)(b) (as added: see note 3).

7 Environmental Protection Act 1990 s 78H(1)(c) (as added: see note 3).

8 Environmental Protection Act 1990 s 78H(1)(d) (as added: see note 3). 'Prescribed' means prescribed by regulations: s 78A(1), (9) (as added: see note 3). As to the meaning of 'regulations' see PARA 763 note 3. As to the making of regulations see PARA 763 note 3.

9 Environmental Protection Act 1990 s 78H(1) (as added: see note 3). As to the meaning of 'remediation' see PARA 766 note 10.

10 At the date at which this volume states the law no such regulations had been made.

11 Environmental Protection Act 1990 s 78H(2) (as added: see note 3).

12 As to the meaning of 'contaminated land' see PARA 761.

13 Environmental Protection Act 1990 s 78H(3) (as added: see note 3). The periods referred to in the text are:

124 (1) the period beginning with the identification of the contaminated land in question pursuant to s 78B(1) (see PARA 762) and ending with the expiration of the period of three months beginning with the day on which the notice required by s 78B(3)(d) or, as the case may be, s 78B(4) (see PARA 762) is given to that person in respect of that land (s 78H(3)(a) (as so added));

- 125 (2) if a decision falling within s 78C(1)(b) (see PARA 763) is made in relation to the contaminated land in question, the period beginning with the making of the decision and ending with the expiration of the period of three months beginning with:
25. (a) in a case where the decision is not referred to the Secretary of State under s 78D (see PARA 765), the day on which the notice required by s 78C(6) (see PARA 763) is given (s 78H(3)(b)(i) (as so added)); or
25
26. (b) in a case where the decision is referred to the Secretary of State, the day on which he gives the notice required by s 78D(4)(b) (see PARA 765) (s 78H(3)(b)(ii) (as so added));
26
- 126 (3) if the Environment Agency gives a notice under s 78C(4) (see PARA 763) to a local authority in relation to the contaminated land in question, the period beginning with the day on which that notice is given and ending with the expiration of the period of three months beginning with:
27. (a) in a case where notice is given under s 78C(6) (see PARA 763), the day on which that notice is given (s 78H(3)(c)(i) (as so added));
27
28. (b) in a case where the authority makes a decision falling within s 78C(5)(b) (see PARA 763) and the Environment Agency fails to give notice under s 78D(1)(b) (see PARA 765), the day following the expiration of the period of 21 days mentioned in that provision (s 78H(3)(c)(ii) (as so added)); or
28
29. (c) in a case where the authority makes a decision falling within s 78C(5)(b) (see PARA 763) which is referred to the Secretary of State under s 78D (see PARA 765), the day on which the Secretary of State gives the notice required by s 78D(4)(b) (see PARA 765) (s 78H(3)(c)(iii) (as so added)).
29

As to the Environment Agency see PARAS 68 et seq, 761 note 6. As to the meaning of 'local authority' see PARA 99. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

14 Ie the Environmental Protection Act 1990 s 78H(1) (see the text and notes 1-9) and s 78H(3) (see the text and note 13).

15 As to the meaning of 'substance' see PARA 761 note 3.

16 As to the meaning of 'harm' see PARA 761 note 4.

17 As to the meaning of 'pollution of controlled waters' see PARA 761 note 6.

18 Environmental Protection Act 1990 s 78H(4) (as added: see note 3).

As to modifications of s 78H(4) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 11 (substituted by SI 2007/3245).

19 Environmental Protection Act 1990 s 78H(5) (as added: see note 3). Where the enforcing authority has been precluded by virtue only of s 78H(5) from serving a remediation notice on an appropriate person but: (1) none of the conditions in that provision is for the time being satisfied in the particular case; and (2) the authority is not precluded by any other provision of Pt IIA from serving a remediation notice on that appropriate person, the authority must serve a remediation notice on that person: s 78H(10) (as so added). Any such notice may be so served without any further endeavours by the authority to consult persons pursuant to s 78H(1) (see the text and notes 1-9), if and to the extent that that person has been consulted pursuant to that provision concerning the things which will be specified in the notice: s 78H(10) (as so added). As to the meaning of 'appropriate person' see PARA 767 note 1.

20 Ie in consequence of Environmental Protection Act 1990 s 78E(4), (5): see PARA 766.

21 Environmental Protection Act 1990 s 78H(5)(a) (as added: see note 3).

22 Environmental Protection Act 1990 s 78H(5)(b) (as added: see note 3).

23 Environmental Protection Act 1990 s 78H(5)(c) (as added: see note 3).

24 Ie by the Environmental Protection Act 1990 s 78N: see PARA 777.

25 Environmental Protection Act 1990 s 78H(5)(d) (as added: see note 3).

26 Ie by virtue of the Environmental Protection Act 1990 s 78E(4) or s 78E(5): see PARA 766.

27 See the Environmental Protection Act 1990 ss 78A(1), (9), 78H(6) (as added: see note 3).

28 Environmental Protection Act 1990 s 78H(6) (as added: see note 3).

29 For these purposes, the 'responsible person' is: (1) in a case where the condition in head (b) in the text is satisfied, the person who is doing or has done, or who the enforcing authority is satisfied will do, the things there mentioned; or (2) in a case where the condition in head (c) or head (d) in the text is satisfied, the enforcing authority: Environmental Protection Act 1990 s 78H(8) (as added: see note 3).

If a person who is required by virtue of head (1) above to prepare and publish a remediation statement fails to do so within a reasonable time after the date on which a remediation notice specifying the things there mentioned could, apart from s 78H(5), have been served, the enforcing authority may itself prepare and publish the statement and may recover its reasonable costs of doing so from that person: s 78H(9) (as so added).

30 See the Environmental Protection Act 1990 ss 78A(1), (9), 78H(7) (as added: see note 3).

31 Environmental Protection Act 1990 s 78H(7)(a) (as added: see note 3).

32 Environmental Protection Act 1990 s 78H(7)(b) (as added: see note 3).

33 Environmental Protection Act 1990 s 78H(7)(c) (as added: see note 3).

34 Ie under the Environmental Protection Act 1990 27 (prospectively repealed): see PARA 185.

35 Environmental Protection Act 1990 s 78YB(1)(a) (as added: see note 3). As to what constitutes significant harm see PARA 761 note 4.

As to modifications of s 78YB(1), (4) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 17 (substituted by SI 2008/520).

36 Environmental Protection Act 1990 s 78YB(1)(b) (as added: see note 3). See note 35. As from a day to be appointed, s 78YB(1)(b) is amended so as to refer to 'significant' pollution of controlled waters: see s 78YB(1)(b) (as so added; prospectively amended by the Water Act 2003 s 86(1), (7)). At the date at which this volume states the law no such day had been appointed.

37 Environmental Protection Act 1990 s 78YB(1) (as added: see note 3). See note 35. As to the non-application of Pt IIA in the event of any significant harm, or pollution of controlled waters by reason of which land would otherwise fall to be regarded as contaminated attributable to the operation of a regulated facility, see s 78YB(1); and PARA 761 note 7.

38 Ie in a case falling within the Environmental Protection Act 1990 s 59(1) or s 59(7): see PARA 702. As to the meaning of 'controlled waste' see PARA 624.

39 As to the meaning of 'waste regulation authority' see PARA 620 note 6.

40 As to the meaning of 'waste collection authority' see PARA 620 note 8.

41 Environmental Protection Act 1990 s 78YB(3) (as added: see note 3).

As to the relationship and overlap between contamination and unlawful deposits of waste see Case C-1/03: *Re Van de Walle v Texaco Belgium SA (Région de Bruxelles-Capitale, intervening)* [2005] All ER (EC) 1139, [2004] All ER (D) 45 (Sep), ECJ.

42 Environmental Protection Act 1990 s 78YB(4) (as added: see note 3). See note 35. The provisions referred to in the text are those of the Water Resources Act 1991 Pt III Ch II (ss 85-91): see PARAS 291 et seq.

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770. Restrictions on liability relating to the pollution of controlled waters.

The following provisions apply where any land is contaminated land¹ in that pollution of controlled waters² is being, or is likely to be, caused³.

Where these provisions apply, no remediation notice⁴ given in consequence of the land in question being contaminated land may require a person who is an appropriate person⁵ only by virtue of being an owner⁶ or occupier of land⁷, to do anything by way of remediation⁸ to that or any other land, or any waters, which he could not have been required to do by such a notice had the provisions concerning pollution of controlled waters⁹ been omitted from Part IIA of the Environmental Protection Act 1990¹⁰.

If, in a case where these provisions apply, a person permits, has permitted, or might permit, water from an abandoned mine¹¹ or part of a mine:

- 1842 (1) to enter any controlled waters¹²; or
- 1843 (2) to reach a place from which it is or, as the case may be, was likely, in the opinion of the enforcing authority¹³, to enter such waters¹⁴,

no remediation notice may require him in consequence to do anything by way of remediation (whether to the contaminated land in question or to any other land or waters) which he could not have been required to do by such a notice had the provisions concerning pollution of controlled waters¹⁵ been omitted from Part IIA of the Environmental Protection Act 1990¹⁶.

Nothing in these provisions¹⁷ prevents the enforcing authority from doing anything by way of remediation¹⁸ which it could have done apart from these provisions, but the authority is not entitled¹⁹ to recover from any person any part of the cost incurred by the authority in doing by way of remediation anything which it is precluded by these provisions from requiring that person to do²⁰.

1 As to the meaning of 'contaminated land' see PARA 761.

2 As to the meaning of 'pollution of controlled waters' see PARA 761 note 6.

3 See the Environmental Protection Act 1990 s 78J(1) (s 78J added by the Environment Act 1995 s 57). The Environmental Protection Act 1990 s 78J applies where any land is contaminated land by virtue of s 78A(2)(b) (see PARA 761), whether or not the land is also contaminated land by virtue of s 78A(2)(a) (see PARA 761): s 78J(1) (as so added). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1.

As to modifications of the Environmental Protection Act 1990 s 78J for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 12.

4 As to the meaning of 'remediation notice' see PARA 766.

5 As to the meaning of 'appropriate person' see PARA 767 note 1.

6 As to the meaning of 'owner' see PARA 762 note 9.

7 I.e. a person who is an appropriate person by virtue of the Environmental Protection Act 1990 s 78F(4) or s 78F(5): see PARA 767.

8 As to the meaning of 'remediation' see PARA 766 note 10.

9 Ie the Environmental Protection Act 1990 s 78A(2)(b) (see PARA 761), and all other references to pollution of controlled waters: see s 78J(2) (as added: see note 3).

10 Environmental Protection Act 1990 s 78J(2) (as added: see note 3). See note 3.

This provision restricts the statutory liability to that arising under the Water Resources Act 1991 s 161 and s 161A (see PARA 321 et seq). The effect is that, under the Environmental Protection Act 1990 Pt IIA, the owner or occupier who is not also the polluter can only be required to remediate where the contamination is or may become significantly harmful within the meaning of s 78A(2)(a) (see PARA 761).

11 For these purposes, 'mine' has the same meaning as in the Mines and Quarries Act 1954 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 5): Environmental Protection Act 1990 s 78J(8) (as added: see note 3). See note 3.

As to the duty to tell the Environment Agency of abandoned mines see the Water Resources Act 1991 Pt III Ch IIA (ss 91A, 91B); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 529.

12 Environmental Protection Act 1990 s 78J(3)(a) (as added: see note 3). See note 3.

13 As to the meaning of 'enforcing authority' see PARA 761 note 6.

14 Environmental Protection Act 1990 s 78J(3)(b) (as added: see note 3). See note 3.

15 See note 9.

16 Environmental Protection Act 1990 s 78J(3) (as added: see note 3). Section 78J(3) does not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31 December 1999: s 78J(4) (as so added). In determining for the purposes of s 78J(4) whether a mine or part of a mine became abandoned before, on or after 31 December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which at least one falls on or before that date and at least one falls after that date, the mine or part is to be regarded as becoming abandoned after that date (but without prejudice to the operation of s 78J(3) in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date): s 78J(5) (as so added). Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part is not to be regarded for the purposes of s 78J(4) or s 78J(5) as constituting the abandonment of the mine, but only of that part of it: s 78J(6) (as so added). See note 3.

17 Ie the Environmental Protection Act 1990 s 78J(2) (see the text and notes 4-10) or s 78J(3) (see the text and notes 11-16).

18 Ie under the Environmental Protection Act 1990 s 78N: see PARA 777.

19 Ie under the Environmental Protection Act 1990 s 78P: see PARA 778.

20 Environmental Protection Act 1990 s 78J(7) (as added: see note 3). See note 3.

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771. Liability in respect of contaminating substances which escape to other land.

A person who has caused¹ or knowingly permitted² any substances³ to be in, on or under any land is also to be taken for the purposes of Part IIA of the Environmental Protection Act 1990⁴ to have caused or, as the case may be, knowingly permitted those substances to be in, on or under any other land to which they appear⁵ to have escaped⁶.

In any case where it appears that any substances are or have been in, on or under any land ('land A') as a result of their escape, whether directly or indirectly, from other land in, on or under which a person caused or knowingly permitted them to be⁷:

1844 (1) no remediation notice⁸ may require a person who is the owner⁹ or occupier of land A, and who has not caused or knowingly permitted the substances in question to be in, on or under that land, to do anything by way of remediation¹⁰ to any land or waters (other than land or waters of which he is the owner or occupier) in consequence of land A appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm¹¹, is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters¹² is being, or is likely to be caused¹³;

1845 (2) no remediation notice may require a person who is the owner or occupier of land A, and who has not caused or knowingly permitted the substances in question to be in, on or under that land, to do anything by way of remediation in consequence of any further land in, on or under which those substances or any of them appear to be or to have been present as a result of their escape from land A ('land B'), appearing to be in such a condition, by reason of the presence of those substances in, on or under it, that significant harm is being caused, or there is a significant possibility of such harm being caused, or that pollution of controlled waters is being, or is likely to be caused, unless he is also the owner or occupier of land B¹⁴.

In any case where:

1846 (a) a person ('person A') has caused or knowingly permitted any substances to be in, on, or under any land¹⁵;

1847 (b) another person ('person B') who has not caused or knowingly permitted those substances to be in, on or under that land becomes the owner or occupier of that land¹⁶; and

1848 (c) the substances, or any of the substances, mentioned in head (a) above appear to have escaped to other land¹⁷,

no remediation notice may require person B to do anything by way of remediation to that other land in consequence of the apparent acts or omissions of person A, except to the extent that person B caused or knowingly permitted the escape¹⁸.

Nothing in these provisions¹⁹ prevents the enforcing authority from doing anything by way of remediation²⁰ which it could have done apart from these provisions, but the authority is not entitled²¹ to recover from any person any part of the cost incurred by the authority in doing by

way of remediation anything which it is precluded by these provisions from requiring that person to do²².

1 See PARA 767 note 4.

2 See PARA 767 note 5.

3 As to the meaning of 'substance' see PARA 761 note 3.

4 Ie the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC). As to Pt IIA generally see PARA 761 note 1.

5 For these purposes, 'appear' means appear to the enforcing authority; and cognate expressions must be construed accordingly: Environmental Protection Act 1990 s 78K(7) (s 78K added by the Environment Act 1995 s 57). As to the meaning of 'enforcing authority' see PARA 761 note 6.

6 Environmental Protection Act 1990 s 78K(1) (as added: see note 5). As to the escape of anything likely to do mischief see also *Rylands v Fletcher* (1868) LR 3 HL 330; and **NUISANCE** vol 78 (2010) PARA 148 et seq. As to the meanings of 'cause' and 'knowingly permit' see PARA 767 notes 4, 5.

7 Environmental Protection Act 1990 s 78K(2) (as added: see note 5).

8 As to the meaning of 'remediation notice' see PARA 766.

9 As to the meaning of 'owner' see PARA 762 note 9.

10 As to the meaning of 'remediation' see PARA 766 note 10.

11 As to the meaning of 'harm' see PARA 761 note 4. As to what constitutes significant harm see PARA 761 note 4.

12 As to the meaning of 'pollution of controlled waters' see PARA 761 note 6.

13 Environmental Protection Act 1990 s 78K(3) (as added: see note 5).

As from a day to be appointed, s 78K(3), (4) is amended so as to refer to 'significant' pollution of controlled waters: see s 78K(3), (4) (as so added; prospectively amended by the Water Act 2003 s 86(1), (5)). At the date at which this volume states the law no such day had been appointed.

As to modifications of the Environmental Protection Act 1990 s 78K(3), (4) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 13.

14 Environmental Protection Act 1990 s 78K(4) (as added: see note 5). See note 13.

15 Environmental Protection Act 1990 s 78K(5)(a) (as added: see note 5).

16 Environmental Protection Act 1990 s 78K(5)(b) (as added: see note 5).

17 Environmental Protection Act 1990 s 78K(5)(c) (as added: see note 5).

18 Environmental Protection Act 1990 s 78K(5) (as added: see note 5).

19 Ie the Environmental Protection Act 1990 s 78K(3), (4), (5): see the text and notes 8-18.

20 Ie under the Environmental Protection Act 1990 s 78N: see PARA 777.

21 Ie under the Environmental Protection Act 1990 s 78P: see PARA 778.

22 Environmental Protection Act 1990 s 78K(6) (as added: see note 5).

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772. Appeals against remediation notices.

A person on whom a remediation notice¹ is served may, within the period of 21 days beginning with the day on which the notice is served, appeal against the notice to the appellate authority², that is:

- 1849 (1) if it was served by a local authority³ in England, or served by the Environment Agency⁴ in relation to land in England, to the Secretary of State⁵; or
 1850 (2) if it was served by a local authority in Wales, or served by the Environment Agency in relation to land in Wales, to the Welsh Ministers⁶.

On any such appeal the appellate authority must quash the notice, if it is satisfied that there is a material defect in the notice⁷; but, subject to that, it may confirm the remediation notice, with or without modification, or quash it⁸.

Where an appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done⁹.

Where an appeal is duly made against a remediation notice¹⁰, the notice is of no effect pending the final determination or abandonment of the appeal¹¹.

1 As to the meaning of 'remediation notice' see PARA 766.

2 Environmental Protection Act 1990 s 78L(1) (s 78L added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1. For these purposes, the 'appellate authority' means the Secretary of State (see PARA 58) or the Welsh Ministers (see PARA 59), as the case may be: see the Environmental Protection Act 1990 s 78L(1) (as so added; and amended by the Clean Neighbourhoods and Environment Act 2005 s 104(1), (3), (7)).

The Environmental Protection Act 1990 s 78L is subject to the Environment Act 1995 s 114 (delegation or reference of appeals etc) (see PARA 65): Environmental Protection Act 1990 s 78L(6) (as so added; and amended by the Clean Neighbourhoods and Environment Act 2005 s 104(1), (5), (7), Sch 5 Pt 10).

Regulations may make provision with respect to: (1) the grounds on which appeals under the Environmental Protection Act 1990 s 78L(1) may be made; or (2) the procedure on such an appeal: s 78L(4) (as so added; and amended by the Clean Neighbourhoods and Environment Act 2005 s 104(1), (4), (7), Sch 5 Pt 10). As to the meaning of 'regulations' see PARA 763 note 3. Regulations under the Environmental Protection Act 1990 s 78L(4) may (among other things): (a) include provisions comparable to those in the Public Health Act 1936 s 290 (appeals against notices requiring the execution of works) (see PARAS 125-127); (b) prescribe the cases in which a remediation notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings; (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the remediation notice against which he is appealing; (d) prescribe the cases in which the appellant may claim that a remediation notice should have been served on some other person and prescribe the procedure to be followed in those cases; (e) make provision as respects: (i) the particulars to be included in the notice of appeal; (ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; and (iii) the abandonment of an appeal; (f) make different provision for different cases or classes of case: Environmental Protection Act 1990 s 78L(5) (as so added). As to the regulations made relating to appeals see the Contaminated Land (England) Regulations 2006, SI 2006/1380; the Contaminated Land (Wales) Regulations 2006, SI 2006/2989; and see also PARAS 773-775.

3 As to the meaning of 'local authority' see PARA 99.

4 As to the Environment Agency see PARAS 68 et seq, 761 note 6.

5 Environmental Protection Act 1990 s 78L(1)(a) (as added (see note 2); and s 78L(1)(a), (b) substituted by the Clean Neighbourhoods and Environment Act 2005 s 104(1), (2), (7)).

6 Environmental Protection Act 1990 s 78L(1)(b) (as added (see note 2); and as substituted (see note 5)).

7 Environmental Protection Act 1990 s 78L(2)(a) (as added: see note 2).

8 Environmental Protection Act 1990 s 78L(2)(b) (as added: see note 2). Before modifying a remediation notice under s 78L(2)(b) in any respect which would be less favourable to the appellant or any other person on whom the notice was served, the Secretary of State must: (1) notify the appellant and any persons on whom the appellant was required to serve a copy of the notice of appeal of the proposed modification; (2) permit any persons so notified to make representations in relation to the proposed modification; and (3) permit the appellant or any other person on whom the remediation notice was served to be heard if any such person so requests: Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 11(1). Where, in accordance with reg 11(1), the appellant or any other person is heard, the enforcing authority is also entitled to be heard: reg 11(2). As to the meaning of 'enforcing authority' see PARA 761 note 6. As to the similar provisions applying in Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 11.

9 Environmental Protection Act 1990 s 78L(3) (as added: see note 2).

10 An appeal against a remediation notice is duly made for these purposes if it is made within the period specified in the Environmental Protection Act 1990 s 78L(1) (see the text and note 2) and the requirements of the Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(1), (2) (see PARA 774) have been complied with: reg 12(2).

As to the equivalent provisions in relation to Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 12(2).

11 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 12(1). As to the similar provisions applying in Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 12(1).

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773. Grounds of appeal.

The grounds of appeal against a remediation notice¹ are any of the following:

- 1851 (1) that, in determining whether any land to which the notice relates appears to be contaminated land², the local authority³: (a) failed to act in accordance with guidance issued by the Secretary of State⁴; or (b) whether by reason of such a failure or otherwise, unreasonably identified all or any of the land to which the notice relates as contaminated land⁵;
- 1852 (2) that, in determining a requirement of the notice, the enforcing authority⁶: (a) failed to have regard to guidance issued by the Secretary of State⁷; or (b) whether by reason of such a failure or otherwise, unreasonably required the appellant to do any thing by way of remediation⁸;
- 1853 (3) that the enforcing authority unreasonably determined the appellant to be the appropriate person who is to bear responsibility for any thing required by the notice to be done by way of remediation⁹;
- 1854 (4) that the enforcing authority unreasonably failed to determine that some person in addition to the appellant is an appropriate person in relation to any thing required by the notice to be done by way of remediation¹⁰;
- 1855 (5) that, in respect of any thing required by the notice to be done by way of remediation, the enforcing authority failed to act in accordance with guidance issued by the Secretary of State¹¹;
- 1856 (6) that, where two or more persons are appropriate persons in relation to any thing required by the notice to be done by way of remediation, the enforcing authority: (a) failed to determine the proportion of the cost stated in the notice to be the liability of the appellant in accordance with guidance issued by the Secretary of State¹²; or (b) whether, by reason of such a failure or otherwise, unreasonably determined the proportion of the cost that the appellant is to bear¹³;
- 1857 (7) that service of the notice contravened a provision restricting or prohibiting the serving of remediation notices¹⁴;
- 1858 (8) that, where the notice was served in reliance on the provisions permitting service where there is imminent danger of serious harm, or serious pollution of controlled waters, being caused¹⁵, the enforcing authority could not reasonably have taken the view that the contaminated land in question was in such a condition by reason of substances¹⁶ in, on or under the land, that there was imminent danger of serious harm, or serious pollution of controlled waters, being caused¹⁷;
- 1859 (9) that the enforcing authority has unreasonably failed to be satisfied¹⁸ that appropriate things are being, or will be, done by way of remediation without service of a notice¹⁹;
- 1860 (10) that any thing required by the notice to be done by way of remediation was required in contravention of a provision restricting liability in relation to the pollution of controlled waters²⁰;
- 1861 (11) that any thing required by the notice to be done by way of remediation was required in contravention of a provision relating to liability in respect of contaminating substances which escape to other land²¹;
- 1862 (12) that the enforcing authority itself has power²² to do what is appropriate by way of remediation²³;

- 1863 (13) that the enforcing authority, in considering²⁴ whether it would seek to recover all or a portion of the cost incurred by it in doing some particular thing by way of remediation: (a) failed to have regard to any hardship which the recovery may cause to the person from whom the cost is recoverable or to any guidance issued by the Secretary of State²⁵; or (b) whether by reason of such a failure or otherwise, unreasonably determined that it would decide to seek to recover all of the cost²⁶;
- 1864 (14) that, in determining a requirement of the notice, the enforcing authority failed to have regard to guidance issued by the Environment Agency²⁷;
- 1865 (15) that a period specified in the notice within which the appellant is required to do anything is not reasonably sufficient for the purpose²⁸;
- 1866 (16) that the notice provides for a person acting in a relevant capacity to be personally liable to bear the whole or part of the cost of doing any thing by way of remediation, contrary to certain provisions²⁹;
- 1867 (17) that service of the notice contravened a provision relating to the interaction of enactments³⁰, and that it ought reasonably to have appeared to the enforcing authority that certain powers might be exercised³¹; or
- 1868 (18) that there has been some informality, defect or error in, or in connection with, the notice, in respect of which there is no right of appeal under the grounds set out in heads (1) to (17) above³².

1 le under the Environmental Protection Act 1990 s 78L(1): see PARA 772. As to the meaning of 'remediation notice' see PARA 766.

2 As to the meaning of 'contaminated land' see PARA 761.

3 As to the meaning of 'local authority' see PARA 99.

4 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(a)(i). These regulations extend to England only: see reg 1. The reference in the text is a reference to guidance issued under the Environmental Protection Act 1990 s 78A(2), (5) or (6) (see PARA 761). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the similar provisions applying in Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(a)(i).

5 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(a)(ii). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(a)(ii).

6 As to the meaning of 'enforcing authority' see PARA 761 note 6.

7 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(b)(i). This provision refers to guidance issued under the Environmental Protection Act 1990 s 78E(5): see PARA 766. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(b)(i).

8 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(b)(ii). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(b)(ii).

9 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(c). As to the meaning of 'remediation' see PARA 766 note 10. As to the determination of the appropriate person see PARA 767. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(c).

10 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(d). A person may only appeal on this ground in a case where: (1) the enforcing authority has determined that he is an appropriate person by virtue of the Environmental Protection Act 1990 s 78F(2) (see PARA 767) and he claims to have found some other person who is an appropriate person by virtue of that provision; (2) the notice is served on him as the owner or occupier for the time being of the contaminated land in question and he claims to have found some other person who is an appropriate person by virtue of that provision; or (3) the notice is served on him as the owner or occupier for the time being of the contaminated land in question, and he claims that some other person is also an owner or occupier for the time being of the whole or part of that land: Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(2). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(d), (2).

11 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(e). This provision refers to guidance issued under the Environmental Protection Act 1990 s 78F(6): see PARA 767. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(e).

12 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(f)(i). This provision refers to guidance issued under the Environmental Protection Act 1990 s 78F(7): see PARA 767. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(f)(i).

13 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(f)(ii). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(f)(ii).

14 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(g). This provision refers to contravention of a provision of the Environmental Protection Act 1990 s 78H(1) or s 78H(3) other than in circumstances where s 78H(4) applies: see PARA 769. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(g).

15 Ie in reliance on the Environmental Protection Act 1990 s 78H(4) without compliance with s 78H(1) or s 78H(3): see PARA 769. As to the meaning of 'harm' see PARA 761 note 4. As to the meanings of 'pollution of controlled waters' and 'controlled waters' see PARA 761 note 6.

16 As to the meaning of 'substance' see PARA 761 note 3.

17 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(h). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(h).

18 Ie in accordance with the Environmental Protection Act 1990 s 78H(5)(b): see PARA 769.

19 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(i). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(i).

20 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(j). The reference in the text is a reference to a provision of the Environmental Protection Act 1990 s 78J: see PARA 770. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(j).

21 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(k). The reference in the text is a reference to a provision of the Environmental Protection Act 1990 s 78K: see PARA 771. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(k).

22 Ie in a case falling within the Environmental Protection Act 1990 s 78N(3)(b) or (e): see PARA 777.

23 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(l), (m). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(l), (m).

24 Ie for the purposes of the Environmental Protection Act 1990 s 78N(3)(e): see PARA 777.

25 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(n)(i). This provision refers to guidance issued for the purposes of the Environmental Protection Act 1990 s 78P(2): see PARA 778. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(n)(i).

26 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(n)(ii). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(n)(ii).

27 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(o). This provision refers to guidance issued under the Environmental Protection Act 1990 s 78V(1): see PARA 784. As to the Environment Agency see PARAS 68 et seq, 761 note 6. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(o).

28 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(p). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(p).

29 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(q). The provisions referred to in the text are those of the Environmental Protection Act 1990 s 78X(3)(a): see PARA 767. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(q).

30 Ie a provision of the Environmental Protection Act 1990 s 78YB: see PARA 769.

31 Ie (1) in a case where the Environmental Protection Act 1990 s 78YB(1) (see PARA 769) is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of the Environment Agency

under s 27 (prospectively repealed) (see PARA 185) might be exercised; or (2) in a case where s 78YB(3) (see PARA 769) is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of a waste regulation authority or waste collection authority under s 59 (see PARA 702) might be exercised: Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(r). As to the meaning of 'waste regulation authority' see PARA 620 note 6; and as to the meaning of 'waste collection authority' see PARA 620 note 8. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(r).

32 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 7(1)(s). If and in so far as an appeal against a remediation notice is based on the ground of some informality, defect or error in, or in connection with, the notice, the appellate authority must dismiss the appeal if it is satisfied that the informality, defect or error was not a material one: reg 7(3). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 7(1)(s), (3).

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774. Procedure for making or abandoning an appeal.

An appeal to the Secretary of State¹ against a remediation notice² is made to him by a notice ('notice of appeal') which must state:

- 1869 (1) the name and address of the appellant³;
- 1870 (2) the grounds on which the appeal is made⁴; and
- 1871 (3) whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations⁵.

At the same time as he serves a notice of appeal on the Secretary of State, the appellant must:

- 1872 (a) serve a copy of it on: (i) the enforcing authority⁶; (ii) any person named in the remediation notice as an appropriate person⁷; (iii) any person named in the notice of appeal as an appropriate person⁸; and (iv) any person named in the remediation notice as the owner or occupier of the whole or any part of the land to which the notice relates⁹;
- 1873 (b) serve on the Secretary of State a statement of the names and addresses of any persons falling within head (a)(ii), (iii) or (iv) above¹⁰; and
- 1874 (c) serve a copy of the remediation notice to which the appeal relates on the Secretary of State and on any person named in the notice of appeal as an appropriate person who is not so named in the remediation notice¹¹.

If the appellant wishes to abandon an appeal, he must do so by notifying the Secretary of State in writing and the appeal is to be treated as abandoned on the date the Secretary of State receives that notification¹². The Secretary of State may refuse to permit an appellant to abandon his appeal against a remediation notice where the notification by the appellant is received by the Secretary of State at any time after the Secretary of State has notified the appellant¹³ of a proposed modification of the remediation notice¹⁴. Where an appeal is abandoned, the Secretary of State must give notice of the abandonment to any person on whom the appellant was required to serve a copy of the notice of appeal¹⁵.

1 As to the Secretary of State see PARA 58. In relation to Wales, the appeal is made to the Welsh Ministers: see PARA 59.

2 As to the meaning of 'remediation notice' see PARA 766.

3 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(1)(a). As to the similar provisions applying in Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(1)(a).

4 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(1)(b). As to the grounds of appeal see PARA 773. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(1)(b).

5 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(1)(c). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(1)(c).

6 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(2)(a)(i). As to the meaning of 'enforcing authority' see PARA 761 note 6. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(2)(a)(i).

7 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(2)(a)(ii). As to who is the appropriate person see PARA 767. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(2)(a)(ii).

8 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(2)(a)(iii). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(2)(a)(iii).

9 Contaminated Land (England) Regulations 2000, SI 2006/1380, reg 8(2)(a)(iv). As to the meaning of 'owner' see PARA 762 note 9. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(2)(a)(iv).

10 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(2)(a). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(2)(a).

11 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(2)(b). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(2)(b).

12 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(3). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(3).

13 Ie in accordance with the Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 11(1): see PARA 772. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 11(1).

14 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(4). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(4).

15 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8(5). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 8(5).

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775. Determination of appeal and notification of decision.

Before determining an appeal¹, the Secretary of State² may, if he thinks fit: (1) cause the appeal to take or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private)³; or (2) cause a local inquiry to be held⁴. The Secretary of State must act as mentioned in head (1) or head (2) above if a request is made by either the appellant or the enforcing authority⁵ to be heard with respect to the appeal⁶. The persons entitled to be heard at a hearing are the appellant, the enforcing authority and any person (other than the enforcing authority) on whom the appellant was required to serve a copy of the notice of appeal⁷. After the conclusion of a hearing, the person appointed to conduct the hearing must, unless he has been appointed⁸ to determine the appeal, make a report in writing to the Secretary of State which must include his conclusions and his recommendations or his reasons for not making any recommendations⁹.

The Secretary of State must notify the appellant in writing of his decision on an appeal and must provide him with a copy of any report¹⁰. The Secretary of State must, at the same time as he notifies the appellant, send a copy of the documents¹¹ to the enforcing authority and to any other person on whom the appellant was required to serve a copy of the notice of appeal¹².

1 Ie by the Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 8: see PARA 774.

2 As to the Secretary of State see PARA 58. In relation to Wales, the appeal is made to the Welsh Ministers: see PARA 59.

3 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 9(1)(a). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 9(1)(a).

4 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 9(1)(b). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 9(1)(b).

5 As to the meaning of 'enforcing authority' see PARA 761 note 6.

6 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 9(2). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 9(2).

7 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 9(3). Nothing in reg 9(3) prevents the person appointed to conduct the hearing of the appeal from permitting any other person to be heard at the hearing, and such permission is not to be unreasonably withheld: reg 9(4). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 9(3), (4).

8 Ie under the Environment Act 1995 s 114(1)(a): see PARA 65.

9 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 9(5). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 9(5).

10 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 10(1). The report referred to in the text is a report mentioned in reg 9(5): see the text and note 9. See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 10(1).

11 Ie the documents mentioned in the Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 10(1): see the text and note 10.

12 Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 10(2). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 10(2).

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776. Offences of not complying with a remediation notice.

If a person on whom an enforcing authority¹ serves a remediation notice² fails, without reasonable excuse, to comply with any of the requirements of the notice, he is guilty of an offence³, and is liable on summary conviction to a penalty⁴. Where the remediation notice in question is one which was required⁵ to state, in relation to the requirement which has not been complied with, the proportion of the cost involved which the person charged with the offence is liable to bear, it is a defence for that person to prove that the only reason why he has not complied with the requirement is that one or more of the other persons who are liable to bear a proportion of that cost refused, or was not able, to comply with the requirement⁶. If the enforcing authority is of the opinion that proceedings for an offence under these provisions would afford an ineffectual remedy against a person who has failed to comply with any of the requirements of a remediation notice which that authority has served on him, that authority may take proceedings in the High Court for the purpose of securing compliance with the remediation notice⁷.

1 As to the meaning of 'enforcing authority' see PARA 761 note 6.

2 As to the meaning of 'remediation notice' see PARA 766.

3 Environmental Protection Act 1990 s 78M(1) (s 78M added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1. Special exemptions are granted to those acting in certain capacities in insolvency situations: see PARA 767 note 10.

4 Except in a case falling within the Environmental Protection Act 1990 s 78M(4), a person who commits an offence under s 78M(1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale and to a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of s 78N(3)(c) (see PARA 777): s 78M(3) (as added: see note 3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

A person who commits an offence under s 78M(1) in a case where the contaminated land to which the remediation notice relates is industrial, trade or business premises is liable on summary conviction to a fine not exceeding £20,000 or such greater sum as the Secretary of State may from time to time by order substitute, and to a further fine of an amount equal to one-tenth of that sum for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of s 78N(3)(c) (see PARA 777): s 78M(4) (as so added). As to the meaning of 'contaminated land' see PARA 761. For these purposes, 'industrial, trade or business premises' means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purpose of manufacturing: s 78M(6) (as so added). No order may be made under s 78M(4) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament: s 78M(7) (as so added). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

5 Ie by the Environmental Protection Act 1990 s 78E(3): see PARA 766.

6 Environmental Protection Act 1990 s 78M(2) (as added: see note 3).

7 Environmental Protection Act 1990 s 78M(5) (as added: see note 3).

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777. Powers of the enforcing authority to carry out remediation.

An enforcing authority¹ has power in certain cases² to do what is appropriate by way of remediation³ to the relevant land or waters⁴ where:

- 1875 (1) the enforcing authority considers it necessary to do anything itself by way of remediation for the purpose of preventing the occurrence of any serious harm⁵, or serious pollution of controlled waters⁶, of which there is imminent danger⁷;
- 1876 (2) an appropriate person⁸ has entered into a written agreement with the enforcing authority for that authority to do, at the cost of that person, that which he would otherwise be required to do⁹ by way of remediation¹⁰;
- 1877 (3) a person on whom the enforcing authority serves a remediation notice fails to comply with any of the requirements of the notice¹¹;
- 1878 (4) the enforcing authority is precluded¹² from including something by way of remediation in a remediation notice¹³;
- 1879 (5) the enforcing authority considers that, were it to do some particular thing by way of remediation, it would decide¹⁴:
- 177
 - 143. (a) not to seek to recover¹⁵ any of the reasonable cost incurred by it in doing that thing¹⁶; or
 - 144. (b) to seek to recover only a portion of that cost¹⁷;
- 178
 - 1880 (6) no person has, after reasonable inquiry, been found who is an appropriate person in relation to any particular thing¹⁸.

For these purposes, the things which it is appropriate for the enforcing authority to do by way of remediation are¹⁹:

- 1881 (i) in a case falling within head (1) above, anything by way of remediation which the enforcing authority considers necessary for the purpose there mentioned²⁰;
- 1882 (ii) in a case falling within head (2) above, anything specified in, or determined under, the agreement there mentioned²¹;
- 1883 (iii) in a case falling within head (3) above, anything which the person there mentioned was required to do by virtue of the remediation notice²²;
- 1884 (iv) in a case falling within head (4) above, anything by way of remediation which the enforcing authority is precluded²³ from including in a remediation notice²⁴;
- 1885 (v) in a case falling within head (5) or (6) above, the particular thing there mentioned²⁵.

1 As to the meaning of 'enforcing authority' see PARA 761 note 6.

2 In a case falling within the Environmental Protection Act 1990 s 78E(1)(a) or (b): see PARA 766. As to Pt IIA (ss 78A-78YC) generally see PARA 761 note 1.

3 As to the meaning of 'remediation' see PARA 766 note 10.

4 Environmental Protection Act 1990 s 78N(1) (s 78N added by the Environment Act 1995 s 57). For these purposes, 'relevant land or waters' means: (1) the contaminated land in question; (2) any controlled waters affected by that land; or (3) any land adjoining or adjacent to that land or those waters: s 78N(5) (as so added). As to the meaning of 'contaminated land' see PARA 761; and as to the meaning of 'controlled waters' see PARA 761 note 6.

Section 78N(1) does not confer power on the enforcing authority to do anything by way of remediation if the authority would, in the particular case, be precluded by s 78YB (see PARAS 761, 769) from serving a remediation notice requiring that thing to be done: s 78N(2) (as so added). As to the meaning of 'remediation notice' see PARA 766.

As to modifications of the Environmental Protection Act 1990 s 78N(1), (3)(a), (d), (4)(d), (5) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 14 (substituted by SI 2007/3245).

5 As to the meaning of 'harm' see PARA 761 note 4.

6 As to the meaning of 'pollution of controlled waters' see PARA 761 note 6.

7 Environmental Protection Act 1990 s 78N(3)(a) (as added: see note 4). See note 4.

8 As to the meaning of 'appropriate person' see PARA 767 note 1.

9 Ie under the Environmental Protection Act 1990 Pt IIA.

10 Environmental Protection Act 1990 s 78N(3)(b) (as added: see note 4).

11 Environmental Protection Act 1990 s 78N(3)(c) (as added: see note 4).

12 Ie by the Environmental Protection Act 1990 s 78J or s 78K: see PARAS 770-771.

13 Environmental Protection Act 1990 s 78N(3)(d) (as added: see note 4). See note 4

14 Ie by virtue of the Environmental Protection Act 1990 s 78P(2) or any guidance issued under that provision: see PARA 778.

15 Ie under the Environmental Protection Act 1990 s 78P(1): see PARA 778.

16 Environmental Protection Act 1990 s 78N(3)(e)(i) (as added: see note 4).

17 Environmental Protection Act 1990 s 78N(3)(e)(ii) (as added: see note 4).

18 Environmental Protection Act 1990 s 78N(3)(f) (as added: see note 4).

19 Environmental Protection Act 1990 s 78N(4) (as added: see note 4). This is expressed to be subject to s 78E(4), (5) (see PARA 766): s 78N(4) (as so added).

20 Environmental Protection Act 1990 s 78N(4)(a) (as added: see note 4).

21 Environmental Protection Act 1990 s 78N(4)(b) (as added: see note 4).

22 Environmental Protection Act 1990 s 78N(4)(c) (as added: see note 4).

23 Ie by the Environmental Protection Act 1990 s 78J or s 78K: see PARAS 770-771.

24 Environmental Protection Act 1990 s 78N(4)(d) (as added: see note 4). See note 4.

25 Environmental Protection Act 1990 s 78N(4)(e) (as added: see note 4).

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778. Recovery of, and security for, the cost of remediation by the enforcing authority.

Where the enforcing authority¹ does any particular thing by way of remediation², it is entitled³ to recover the reasonable cost incurred in doing it from the appropriate person⁴ or, if there are two or more appropriate persons in relation to the thing in question, from those persons in such proportions as are determined⁵. In deciding whether to recover the cost, and, if so, how much of the cost, which it is entitled to recover under these provisions, the enforcing authority must have regard: (1) to any hardship which the recovery may cause to the person from whom the cost is recoverable; and (2) to any guidance issued by the Secretary of State for these purposes⁶.

In any case where:

- 1886 (a) any cost is recoverable⁷ from a person who is the owner⁸ of any premises which consist of or include the contaminated land⁹ in question and who caused or knowingly permitted the substances¹⁰, or any of the substances, by reason of which the land is contaminated land to be in, on or under the land¹¹; and
- 1887 (b) the enforcing authority serves a notice under this provision (a 'charging notice'¹²) on that person¹³,

the cost carries interest, at such reasonable rate as the enforcing authority may determine, from the date of service of the notice until the whole amount is paid; and, subject to the following provisions, the cost and accrued interest are a charge on the premises mentioned in head (a) above¹⁴.

On the date on which an enforcing authority serves a charging notice on a person, the authority must also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge¹⁵.

The amount of any cost specified in a charging notice and the accrued interest are a charge on the premises:

- 1888 (i) as from the end of the period of 21 days beginning with the service of the charging notice¹⁶; or
- 1889 (ii) where an appeal is brought¹⁷, as from the final determination or (as the case may be) the withdrawal of the appeal¹⁸,

until the cost and interest are recovered¹⁹.

A person served with a charging notice or a copy of a charging notice may appeal against the notice to a county court within the period of 21 days beginning with the date of service²⁰. On such an appeal, the court may:

- 1890 (A) confirm the notice without modification²¹;
- 1891 (B) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it²²; or
- 1892 (C) order that the notice is to be of no effect²³.

Regulations²⁴ may make provision with respect to the grounds on which such appeals may be made, or the procedure on any such appeal²⁵.

For the purpose of enforcing a charge under these provisions, an enforcing authority has all the same powers and remedies under the Law of Property Act 1925²⁶, and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases, and of appointing a receiver²⁷.

Where any cost is a charge on premises under these provisions, the enforcing authority may by order declare the cost to be payable with interest²⁸ by instalments within the specified period²⁹ until the whole amount is paid³⁰.

1 As to the meaning of 'enforcing authority' see PARA 761 note 6.

2 Ie by virtue of the Environmental Protection Act 1990 s 78N(3)(a), (c), (e) or (f): see PARA 777. As to the meaning of 'remediation' see PARA 766 note 10. As to Pt IIA (ss 78A-78YC) generally see PARA 761 note 1.

3 Ie subject to the Environmental Protection Act 1990 s 78J(7) and s 78K(6): see PARAS 770-771.

4 As to the meaning of 'appropriate person' see PARA 767 note 1.

5 Environmental Protection Act 1990 s 78P(1) (ss 78A, 78P added by the Environment Act 1995 s 57). The proportions are to be determined pursuant to the Environmental Protection Act 1990 s 78F(7) (see PARA 767): s 78P(1) (as so added).

As to modifications of the Environmental Protection Act 1990 s 78P(1) for the purpose of the identification and remediation of radioactive contaminated land see the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 15.

6 Environmental Protection Act 1990 s 78P(2) (as added: see note 5). As to the Secretary of State's guidance see Department of the Environment, Transport and the Regions (DETR) Circular 2/2000 (Contaminated Land), Annex 3.

7 Ie under the Environmental Protection Act 1990 s 78P(1): see the text and notes 1-5.

8 As to the meaning of 'owner' see PARA 762 note 9.

9 As to the meaning of 'contaminated land' see PARA 761.

10 As to the meaning of 'substance' see PARA 761 note 3. As to the meanings of 'cause' and 'knowingly permit' see PARA 767 notes 4, 5.

11 Environmental Protection Act 1990 s 78P(3)(a) (as added: see note 5).

12 See the Environmental Protection Act 1990 ss 78A(1), (9), 78P(3)(b) (as added: see note 5). A charging notice must: (1) specify the amount of the cost which the enforcing authority claims is recoverable; (2) state the effect of s 78P(4) (see the text and note 14) and the rate of interest determined by the authority under that provision; and (3) state the effect of s 78P(7), (8) (see the text and notes 16-20): s 78P(5) (as so added).

13 Environmental Protection Act 1990 s 78P(3)(b) (as added: see note 5).

14 Environmental Protection Act 1990 s 78P(4) (as added: see note 5).

15 Environmental Protection Act 1990 s 78P(6) (as added: see note 5).

16 Environmental Protection Act 1990 s 78P(7)(a) (as added: see note 5).

17 Ie under the Environmental Protection Act 1990 s 78P(8): see the text and note 20.

18 Environmental Protection Act 1990 s 78P(7)(b) (as added: see note 5).

19 Environmental Protection Act 1990 s 78P(7) (as added: see note 5). This is expressed to be subject to any order under s 78P(9)(b) or (c) (see heads (B), (C) in the text): s 78P(7) (as so added).

- 20 Environmental Protection Act 1990 s 78P(8) (as added: see note 5).
- 21 Environmental Protection Act 1990 s 78P(9)(a) (as added: see note 5).
- 22 Environmental Protection Act 1990 s 78P(9)(b) (as added: see note 5).
- 23 Environmental Protection Act 1990 s 78P(9)(c) (as added: see note 5).
- 24 As to the meaning of 'regulations' see PARA 763 note 3.
- 25 Environmental Protection Act 1990 s 78P(10) (as added: see note 5). At the date at which this volume states the law, no such regulations had been made.
- 26 As to powers of sale, appointment of a receiver etc see **MORTGAGE** vol 77 (2010) PARA 440 et seq.
- 27 Environmental Protection Act 1990 s 78P(11) (as added: see note 5).
- 28 For these purposes, 'interest' means interest at the rate determined by the enforcing authority under the Environmental Protection Act 1990 s 78P(4) (see the text and note 14): s 78P(13) (as added: see note 5).
- 29 For these purposes, 'specified period' means such period of 30 years or less from the date of service of the charging notice as is specified in the order: Environmental Protection Act 1990 s 78P(13) (as added: see note 5).
- 30 Environmental Protection Act 1990 s 78P(12) (as added: see note 5).

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779. Designation of special sites after service of remediation notice.

If, in a case where a local authority¹ has served a remediation notice², the contaminated land³ in question becomes a special site⁴, the Environment Agency⁵ may adopt the remediation notice⁶ and, if it does so:

- 1893 (1) it must give notice⁷ of its decision to adopt the remediation notice to the appropriate person⁸ and to the local authority⁹;
- 1894 (2) the remediation notice has effect, as from the time at which the Environment Agency decides to adopt it, as a remediation notice given by the Environment Agency¹⁰; and
- 1895 (3) the validity of the remediation notice is not affected by:
 - 179 145. (a) the contaminated land having become a special site¹¹;
 - 146. (b) the adoption of the remediation notice by the Environment Agency¹²; or
 - 180 147. (c) anything in head (2) above¹³.

Where a local authority has¹⁴ begun to do any thing, or any series of things, by way of remediation¹⁵:

- 1896 (i) the authority may continue doing that thing, or that series of things notwithstanding that the contaminated land in question becomes a special site¹⁶; and
- 1897 (ii) provisions relating to the recovery of, and security for, the cost of remediation by the enforcing authority¹⁷ apply in relation to the reasonable cost incurred by the authority in doing that thing or those things as if that authority were the enforcing authority¹⁸.

If and so long as any land is a special site, the Environment Agency may from time to time inspect that land for the purpose of keeping its condition under review¹⁹. If it appears to the Environment Agency that a special site is no longer land which is required to be designated as such a site, the Environment Agency may give notice:

- 1898 (A) to the Secretary of State²⁰; and
- 1899 (B) to the local authority in whose area the site is situated²¹,

terminating the designation of the land in question as a special site as from such date as may be specified in the notice²². In exercising these functions²³ the Environment Agency must act in accordance with any guidance given for the purpose by the Secretary of State²⁴.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'remediation notice' see PARA 766.

3 As to the meaning of 'contaminated land' see PARA 761.

- 4 As to the meaning of 'special site' see PARA 761.
- 5 As to the Environment Agency see PARAS 68 et seq, 761 note 6.
- 6 Environmental Protection Act 1990 s 78Q(1) (s 78Q added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1.
- 7 As to the meaning of 'notice' see PARA 762 note 7.
- 8 As to the meaning of 'appropriate person' see PARA 767 note 1.
- 9 Environmental Protection Act 1990 s 78Q(1)(a) (as added: see note 6).
- 10 Environmental Protection Act 1990 s 78Q(1)(b) (as added: see note 6).
- 11 Environmental Protection Act 1990 s 78Q(1)(c)(i) (as added: see note 6).
- 12 Environmental Protection Act 1990 s 78Q(1)(c)(ii) (as added: see note 6).
- 13 Environmental Protection Act 1990 s 78Q(1)(c)(iii) (as added: see note 6).
- 14 Ie by virtue of the Environmental Protection Act 1990 s 78N: see PARA 777.
- 15 As to the meaning of 'remediation' see PARA 766 note 10.
- 16 Environmental Protection Act 1990 s 78Q(2)(a) (as added: see note 6).
- 17 Ie the Environmental Protection Act 1990 s 78P: see PARA 778. As to the meaning of 'enforcing authority' see PARA 761 note 6.
- 18 Environmental Protection Act 1990 s 78Q(2)(b) (as added: see note 6).
- 19 Environmental Protection Act 1990 s 78Q(3) (as added: see note 6).
- 20 Environmental Protection Act 1990 s 78Q(4)(a) (as added: see note 6). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.
- 21 Environmental Protection Act 1990 s 78Q(4)(b) (as added: see note 6).
- 22 Environmental Protection Act 1990 s 78Q(4) (as added: see note 6). A notice under s 78Q(4) does not prevent the land, or any of the land, to which the notice relates being designated as a special site on a subsequent occasion: s 78Q(5) (as so added).
- 23 Ie its functions under the Environmental Protection Act 1990 s 78Q(3) or (4): see the text and notes 19-22.
- 24 Environmental Protection Act 1990 s 78Q(6) (as added: see note 6).

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780. Registers.

Every enforcing authority¹ must maintain a register (which may be kept in any form²) containing prescribed³ particulars of or relating to⁴:

- 1900 (1) remediation notices served by that authority⁵;
- 1901 (2) appeals against any such remediation notices⁶;
- 1902 (3) remediation statements or remediation declarations⁷;
- 1903 (4) in relation to an enforcing authority in England and Wales, appeals against charging notices served by that authority⁸;
- 1904 (5) notices⁹ which have effect¹⁰ as the designation of any land as a special site¹¹;
- 1905 (6) notices given by or to the enforcing authority¹² terminating the designation of any land as a special site¹³;
- 1906 (7) notifications given to that authority by persons:
 - 181 148. (a) on whom a remediation notice has been served¹⁴; or
 - 149. (b) who are or were required¹⁵ to prepare and publish a remediation statement¹⁶,
 - 182
 - 1907 of what they claim has been done by them by way of remediation¹⁷;
 - 1908 (8) notifications given to that authority by owners¹⁸ or occupiers of land:
 - 183 150. (a) in respect of which a remediation notice has been served¹⁹; or
 - 151. (b) in respect of which a remediation statement has been prepared and published²⁰,
 - 184
 - 1909 of what they claim has been done on the land in question by way of remediation²¹;
 - 1910 (9) convictions for such offences²² as may be prescribed²³;
 - 1911 (10) such other matters relating to contaminated land as may be prescribed²⁴.

Where any particulars are entered on a register maintained under these provisions by the Environment Agency, the Environment Agency must send a copy of those particulars to the local authority in whose area is situated the land to which the particulars relate²⁵. In any case where:

- 1912 (i) any land is treated²⁶ as situated in the area of a local authority other than the local authority in whose area it is in fact situated²⁷; and
- 1913 (ii) any particulars relating to that land are entered on the register maintained under these provisions by the local authority in whose area the land is so treated as situated²⁸,

that authority must send a copy of those particulars to the local authority in whose area the land is in fact situated²⁹. Where a local authority receives a copy of any particulars sent to it³⁰, the authority must enter those particulars on the register maintained by it under these provisions³¹.

Where information of any description is excluded³² from any register maintained under these provisions, a statement must be entered in the register indicating the existence of information of that description³³. It is the duty of each enforcing authority:

- 1914 (A) to secure that the registers maintained by it are available, at all reasonable times, for inspection by the public free of charge³⁴; and
- 1915 (B) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges³⁵.

1 As to the meaning of 'enforcing authority' see PARA 761 note 6.

2 Environmental Protection Act 1990 s 78R(9) (ss 78A, 78R added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1.

3 'Prescribed' means prescribed by regulations: Environmental Protection Act 1990 s 78A(1), (9) (as added: see note 2). As to the meaning of 'regulations' see PARA 763 note 3. As to the making of regulations see PARA 763 note 3. Provision is made for prescribing: (1) for the purposes of s 78R(1), the particulars of or relating to the matters to be contained in a register maintained under that provision; and (2) other matters in respect of which such a register must contain prescribed particulars pursuant to s 78R(1)(l) (see the text and note 24): see the Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 13(1), Sch 3. As to the similar provisions applying in Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 13(1), Sch 3.

A register maintained by an enforcing authority under the Environmental Protection Act 1990 s 78R must contain full particulars of the following matters:

- 127 (a) in relation to a remediation notice served by the authority:
 - 30. (i) the name and address of the person on whom the notice is served (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 1(a));
30
 - 31. (ii) the location and extent of the contaminated land to which the notice relates, in sufficient detail to enable it to be identified, whether by reference to a plan or otherwise (Sch 3 para 1(b));
31
 - 32. (iii) the significant harm or pollution of controlled waters by reason of which the contaminated land in question is contaminated land (Sch 3 para 1(c));
32
 - 33. (iv) the substances by reason of which the contaminated land in question is contaminated land and, if any of the substances have escaped from other land, the location of that other land (Sch 3 para 1(d));
33
 - 34. (v) the current use of the contaminated land in question (Sch 3 para 1(e));
34
 - 35. (vi) what each appropriate person is to do by way of remediation and the periods within which each of the things must be done (Sch 3 para 1(f)); and
35
 - 36. (vii) the date of the notice (Sch 3 para 1(g));
36
- 128 (b) any appeal against a remediation notice served by the authority (Sch 3 para 2);
- 129 (c) any decision on such an appeal (Sch 3 para 3);
- 130 (d) any remediation declaration prepared and published by the enforcing authority under the Environmental Protection Act 1990 s 78H(6) (see PARA 769) (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 4);
- 131 (e) in relation to any such remediation declaration: (i) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise; and (ii) the matters referred to in heads (a)(iii), (iv) and (v) above (Sch 3 para 5);

- 132 (f) any remediation statement prepared and published by the responsible person under the Environmental Protection Act 1990 s 78H(7) or by the enforcing authority under s 78H(9) (see PARA 769) (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 6);
- 133 (g) in relation to any such remediation statement: (i) the location and extent of the contaminated land in question, sufficient to enable it to be identified whether by reference to a plan or otherwise; and (ii) the matters referred to in heads (a)(iii), (iv) and (v) above (Sch 3 para 7);
- 134 (h) in the case of an enforcing authority, any appeal under the Environmental Protection Act 1990 s 78P(8) against a charging notice served by the enforcing authority (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 8);
- 135 (i) any decision on such an appeal (Sch 3 para 9);
- 136 (j) in the case of the Environment Agency, as respects any land in relation to which it is the enforcing authority, and in the case of a local authority, as respects any land in its area:
37. (i) any notice given by a local authority under the Environmental Protection Act 1990 s 78C(1)(b) or s 78C(5)(a) (see PARA 763) or by the Secretary of State under s 78D(4)(b) (see PARA 765) which, by virtue of s 78C(7) or s 78D(6) respectively, has effect as the designation of any land as a special site (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 10(a));
37
38. (ii) the provisions of reg 2 or reg 3 (see PARA 764) by virtue of which the land is required to be designated as a special site (Sch 3 para 10(b));
38
39. (iii) any notice given by the Environment Agency under the Environmental Protection Act 1990 s 78Q(1)(a) (see PARA 779) of its decision to adopt a remediation notice (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 10(c)); and
39
40. (iv) any notice given by or to the enforcing authority under the Environmental Protection Act 1990 s 78Q(4) (see PARA 779) terminating the designation of any land as a special site (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 10(d));
40
- 137 (k) any notification given to the authority for the purposes of the Environmental Protection Act 1990 s 78R(1)(h) or (j) (see the text and notes 14-21) (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 11);
- 138 (l) any conviction of a person for any offence under the Environmental Protection Act 1990 s 78M (see PARA 776) in relation to a remediation notice served by the authority, including the name of the offender, the date of conviction, the penalty imposed and the name of the court (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 12);
- 139 (m) in the case of the Environment Agency, the date of any guidance issued by it under the Environmental Protection Act 1990 s 78V(1) (see PARA 784) and, in the case of a local authority, the date of any guidance issued by the Environment Agency to it under that provision (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 13);
- 140 (n) where the authority is precluded by virtue of the Environmental Protection Act 1990 s 78YB(1) or s 78YB(2B) (see PARA 769) from serving a remediation notice:
41. (i) the location and extent of the contaminated land in question, in sufficient detail to enable it to be identified whether by reference to a plan or otherwise (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 14(a));
41
42. (ii) the matters referred to in heads (a)(iii), (iv) and (v) above (Sch 3 para 14(b)); and
42
43. (iii) any steps of which the authority has knowledge, carried out under the Environmental Protection Act 1990 s 27 (prospectively repealed) (see PARA 185) or by means of an enforcement notice within the meaning of s 78YB(2B), towards remedying any significant harm or pollution of controlled

waters by reason of which the land in question is contaminated land (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 14(c));
43

141 (o) where the authority is precluded by virtue of the Environmental Protection Act 1990 s 78YB(3) (see PARA 769) from serving a remediation notice in respect of land which is contaminated land by reason of the deposit of controlled waste or any consequences of its deposit:

44. (i) the location and extent of the contaminated land in question, in sufficient detail to enable it to be identified whether by reference to a plan or otherwise (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 15(a));
44

45. (ii) the matters referred to in heads (a)(iii), (iv) and (v) above (Sch 3 para 15(b)); and
45

46. (iii) any steps of which the enforcing authority has knowledge, carried out under the Environmental Protection Act 1990 s 59 (see PARA 702), in relation to that waste or the consequences of its deposit, including in a case where a waste collection authority (within the meaning of s 30(3)) (see PARA 620) took those steps or required the steps to be taken, the name of that authority (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 15(c));
46

142 (p) where, as a result of a consent given under the Water Resources Act 1991 Pt III Ch II (ss 85-91) (see PARA 291 et seq), the enforcing authority is precluded by virtue of the Environmental Protection Act 1990 s 78YB(4) (see PARA 769) from specifying in a remediation notice any particular thing by way of remediation which it would otherwise have specified in such a notice:

47. (i) the consent (Contaminated Land (England) Regulations 2006, SI 2006/1380, Sch 3 para 16(a));
47

48. (ii) the location and extent of the contaminated land in question, in sufficient detail to enable it to be identified whether by reference to a plan or otherwise (Sch 3 para 16(b)); and
48

49. (iii) the matters referred to in heads (a)(iii), (iv) and (v) above (Sch 3 para 16(c)).
49

As to the meaning of 'remediation notice' see PARA 766. As to the meaning of 'contaminated land' see PARA 761. As to the meaning of 'harm' see PARA 761 note 4. As to what constitutes significant harm see PARA 761 note 4. As to the meanings of 'pollution of controlled waters' and 'controlled waters' see PARA 761 note 6. As to the meaning of 'substance' see PARA 761 note 3. As to the meaning of 'remediation statement' see PARA 769. As to the meaning of 'remediation' see PARA 766 note 10. As to the meaning of 'remediation declaration' see PARA 769. As to the meaning of 'charging notice' see PARA 778. As to the meaning of 'local authority' see PARA 99. As to the meaning of 'special site' see PARA 761. As to the meaning of 'notification' see PARA 763 note 20. As to the meaning of 'controlled waste' see PARA 624. As to the Environment Agency see PARAS 68 et seq, 761 note 6. As to who is the appropriate person see PARA 767. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Environmental Protection Act 1990 s 78R(1) (as added: see note 2). This duty is subject to ss 78S, 78T (see PARAS 781-782): s 78R(1) (as so added).

5 Environmental Protection Act 1990 s 78R(1)(a) (as added: see note 2).

6 Environmental Protection Act 1990 s 78R(1)(b) (as added: see note 2).

7 Environmental Protection Act 1990 s 78R(1)(c) (as added: see note 2). This refers to statements and declarations prepared and published under s 78H: see PARA 769.

8 Environmental Protection Act 1990 s 78R(1)(d) (as added: see note 2).

9 I.e. notices under the Environmental Protection Act 1990 s 78C(1)(b) or s (5)(a) or s 78D(4)(b): see PARAS 763, 765.

10 I.e. by virtue of the Environmental Protection Act 1990 s 78C(7) or s 78D(6): see PARAS 763, 765.

11 Environmental Protection Act 1990 s 78R(1)(e), (f) (as added: see note 2).

12 I.e. under the Environmental Protection Act 1990 s 78Q(4): see PARA 779.

- 13 Environmental Protection Act 1990 s 78R(1)(g) (as added: see note 2).
- 14 Environmental Protection Act 1990 s 78R(1)(h)(i) (as added: see note 2).
- 15 Ie by virtue of the Environmental Protection Act 1990 s 78H(8)(a): see PARA 769.
- 16 Environmental Protection Act 1990 s 78R(1)(h)(ii) (as added: see note 2).
- 17 Environmental Protection Act 1990 s 78R(1)(h) (as added: see note 2). See also note 21.
- 18 As to the meaning of 'owner' see PARA 762 note 9.
- 19 Environmental Protection Act 1990 s 78R(1)(j)(i) (as added: see note 2).
- 20 Environmental Protection Act 1990 s 78R(1)(j)(ii) (as added: see note 2).
- 21 Environmental Protection Act 1990 s 78R(1)(j) (as added: see note 2). The form of, and the descriptions of information to be contained in, notifications for the purposes of s 78R(1)(h) (see the text and notes 14-17) or s 78R(1)(j) may be prescribed by the Secretary of State: s 78R(2) (as so added). The following descriptions of information are prescribed for these purposes:
- 143 (1) the location and extent of the land sufficient to enable it to be identified (Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 13(2)(a));
 - 144 (2) the name and address of the person who it is claimed has done each of the things by way of remediation (reg 13(2)(b));
 - 145 (3) a description of any thing which it is claimed has been done by way of remediation (reg 13(2)(c)); and
 - 146 (4) the period within which it is claimed each such thing was done (reg 13(2)(d)).
- As to the similar provisions applying in Wales see the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 13(2).
- No entry made in a register by virtue of the Environmental Protection Act 1990 s 78R(1)(h) or (j) constitutes a representation by the body maintaining the register or, in a case where the entry is made by virtue of s 78R(6) (see the text and note 31), the authority which sent the copy of the particulars in question pursuant to s 78R(4) or (5) (see the text and notes 26-29): (1) that what is stated in the entry to have been done has in fact been done; or (2) as to the manner in which it has been done: s 78R(3) (as so added).
- 22 Ie under the Environmental Protection Act 1990 s 78M: see PARA 776.
- 23 Environmental Protection Act 1990 s 78R(1)(k) (as added: see note 2).
- 24 Environmental Protection Act 1990 s 78R(1)(l) (as added: see note 2). See note 3.
- 25 Environmental Protection Act 1990 s 78R(4) (as added: see note 2).
- 26 Ie by virtue of the Environmental Protection Act 1990 s 78X(2): see PARA 761.
- 27 Environmental Protection Act 1990 s 78R(5)(a) (as added: see note 2).
- 28 Environmental Protection Act 1990 s 78R(5)(b) (as added: see note 2).
- 29 Environmental Protection Act 1990 s 78R(5) (as added: see note 2).
- 30 Ie pursuant to the Environmental Protection Act 1990 s 78R(4) (see the text and note 25) or s 78R(5) (see the text and notes 26-29).
- 31 Environmental Protection Act 1990 s 78R(6) (as added: see note 2).
- 32 Ie by virtue of the Environmental Protection Act 1990 s 78T: see PARA 782.
- 33 Environmental Protection Act 1990 s 78R(7) (as added: see note 2).
- 34 Environmental Protection Act 1990 s 78R(8)(a) (as added: see note 2). See also note 35.

35 Environmental Protection Act 1990 s 78R(8)(b) (as added: see note 2). For these purposes, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in s 78R(8)(a) or (b) are to be available or afforded to the public: s 78R(8) (as so added). The following places are prescribed for these purposes as places at which any registers or facilities for obtaining copies are to be available or afforded to the public: (1) where the enforcing authority is the local authority, its principal office; and (2) where the enforcing authority is the Environment Agency, its office for the area in which the contaminated land in question is situated: Contaminated Land (England) Regulations 2006, SI 2006/1380, reg 13(3). See also the Contaminated Land (Wales) Regulations 2006, SI 2006/2989, reg 13(3).

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781. Exclusion from registers of information affecting national security.

No information may be included in a register¹ if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or information of that description, would be contrary to the interests of national security². The Secretary of State may, for the purpose of securing the exclusion from registers of information to which the above provision applies, give directions to enforcing authorities³:

- 1916 (1) specifying information, or descriptions of information, to be excluded from their registers⁴; or
- 1917 (2) specifying descriptions of information to be referred to the Secretary of State for his determination⁵.

No information referred to the Secretary of State in pursuance of head (2) above may be included in any such register until the Secretary of State determines that it should be so included⁶.

¹ ie a register maintained under the Environmental Protection Act 1990 s 78R: see PARA 780. As to Pt IIA (ss 78A-78YC) generally see PARA 761 note 1.

² Environmental Protection Act 1990 s 78S(1) (s 78S added by the Environment Act 1995 s 57). A person may, as respects any information which appears to him to be information to which the Environmental Protection Act 1990 s 78S(1) may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and if he does so: (1) he must notify the enforcing authority that he has done so; and (2) no information so notified to the Secretary of State may be included in any such register until the Secretary of State has determined that it should be so included: s 78S(4) (as so added). As to the meaning of 'notice' see PARA 762 note 7.

As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

³ Environmental Protection Act 1990 s 78S(2) (as added: see note 2). As to the meaning of 'enforcing authority' see PARA 761 note 6.

⁴ Environmental Protection Act 1990 s 78S(2)(a) (as added: see note 2). See also note 6.

⁵ Environmental Protection Act 1990 s 78S(2)(b) (as added: see note 2). See also note 6.

⁶ Environmental Protection Act 1990 s 78S(2) (as added: see note 2). The enforcing authority must notify the Secretary of State of any information which it excludes from the register in pursuance of directions under s 78S(2): s 78S(3) (as so added).

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782. Exclusion from registers of certain confidential information.

No information relating to the affairs of any individual or business may be included in a register¹ without the consent of that individual or the person for the time being carrying on that business², if and so long as the information:

- 1918 (1) is, in relation to him, commercially confidential³; and
- 1919 (2) is not required⁴ to be included in the register⁵.

Information is not commercially confidential for these purposes unless it is determined under these provisions to be so by the enforcing authority⁶ or, on appeal, by the Secretary of State⁷. Where it appears to an enforcing authority that any information which has been obtained by the authority under or by virtue of any provision of Part IIA of the Environmental Protection Act 1990 might be commercially confidential, the authority must⁸:

- 1920 (a) give to the person to whom or to whose business it relates notice⁹ that that information is required to be included in the register unless excluded under these provisions¹⁰; and
- 1921 (b) give him a reasonable opportunity of objecting to the inclusion of the information on the ground that it is commercially confidential, and of making representations to the authority for the purpose of justifying any such objection¹¹.

If any representations are made, the enforcing authority must, having taken the representations into account, determine whether the information is or is not commercially confidential¹². Where an authority determines that information is not commercially confidential:

- 1922 (i) the information must not be entered in the register until the end of the period of 21 days beginning with the date on which the determination is notified to the person concerned¹³; and
- 1923 (ii) that person may appeal to the Secretary of State against the decision¹⁴.

Where an appeal is brought in respect of any information, the information must not be entered in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn¹⁵.

The Secretary of State may give to the enforcing authorities directions as to specified information, or descriptions of information, which the public interest requires to be included in registers¹⁶ notwithstanding that the information may be commercially confidential¹⁷.

Information excluded from a register is to be treated as ceasing to be commercially confidential for these purposes at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the authority for the information to remain excluded from the register on the ground that it is still commercially confidential and the authority must determine whether or not that is the case¹⁸.

1 le a register maintained under the Environmental Protection Act 1990 s 78R: see PARA 376. As to Pt IIA (ss 78A-78YC) generally see PARA 761 note 1.

2 Environmental Protection Act 1990 s 78T(1) (s 78T added by the Environment Act 1995 s 57).

3 Environmental Protection Act 1990 s 78T(1)(a) (as added: see note 2). Information is, for the purposes of any determination under s 78T, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person: s 78T(10) (as so added). For this purpose, any prejudice to the commercial interests of any individual or person must be disregarded so far as relating only to the value of the contaminated land in question or otherwise to the ownership or occupation of that land: s 78T(11) (as so added). As to the meaning of 'contaminated land' see PARA 761.

4 le in pursuance of directions under the Environmental Protection Act 1990 s 78T(7): see the text and notes 16-17.

5 Environmental Protection Act 1990 s 78T(1)(b) (as added: see note 2).

6 As to the meaning of 'enforcing authority' see PARA 761 note 6.

7 Environmental Protection Act 1990 s 78T(1) (as added: see note 2). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

8 Environmental Protection Act 1990 s 78T(2) (as added: see note 2).

9 As to the meaning of 'notice' see PARA 762 note 7.

10 Environmental Protection Act 1990 s 78T(2)(a) (as added: see note 2).

11 Environmental Protection Act 1990 s 78T(2)(b) (as added: see note 2).

12 Environmental Protection Act 1990 s 78T(2) (as added: see note 2).

13 Environmental Protection Act 1990 s 78T(3)(a) (as added: see note 2).

14 Environmental Protection Act 1990 s 78T(3)(b) (as added: see note 2). An appeal under s 78T(3) must, if either party to the appeal so requests or the Secretary of State so decides, take or continue in the form of a hearing (which must be held in private): s 78T(4) (as so added). Section 15(10) (s 15 prospectively repealed) (see PARA 176) applies in relation to an appeal under s 78T(3) as it applies in relation to an appeal under s 15: s 78T(5) (as so added). Section 78T(3) is subject to the Environment Act 1995 s 114 (delegation or reference of appeals etc) (see PARA 65): Environmental Protection Act 1990 s 78T(6) (as so added).

15 Environmental Protection Act 1990 s 78T(3) (as added: see note 2).

16 le registers maintained under the Environmental Protection Act 1990 s 78R: see PARA 780.

17 Environmental Protection Act 1990 s 78T(7) (as added: see note 2).

18 Environmental Protection Act 1990 s 78T(8) (as added: see note 2). Section 78T(3)-(6) (see the text and notes 13-15) applies in relation to a determination under s 78T(8) as it applies in relation to a determination under s 78T(2) (see the text and notes 8-12): s 78T(9) (as so added).

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783. Reports by the Environment Agency on the state of contaminated land.

The Environment Agency¹ must from time to time, or if the Secretary of State² at any time so requests, prepare and publish a report on the state of contaminated land³ in England and Wales⁴.

A local authority⁵ must, at the written request of the Environment Agency, furnish the Environment Agency with certain information⁶ that the Environment Agency may require for the purpose of enabling it to perform its functions under the above provisions⁷.

1 As to the Environment Agency see PARAS 68 et seq, 761 note 6.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the meaning of 'contaminated land' see PARA 761.

4 Environmental Protection Act 1990 s 78U(1) (s 78U added by the Environment Act 1995 s 57). As to the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) generally see PARA 761 note 1. See also Environment Agency *Dealing with Contaminated Land in England and Wales* (2009); which, at the date at which this volume states the law, was available at www.environment-agency.gov.uk.

5 As to the meaning of 'local authority' see PARA 99.

6 The information to which the Environmental Protection Act 1990 s 78U(2) applies is such information as the local authority may have, or may reasonably be expected to obtain, with respect to the condition of contaminated land in its area, being information which the authority has acquired or may acquire in the exercise of its functions under Pt IIA: s 78U(3) (as added: see note 4).

7 Environmental Protection Act 1990 s 78U(2) (as added: see note 4). The functions referred to in the text are those under s 78U(1): see the text and notes 1-4.

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784. Site-specific guidance by the Environment Agency concerning contaminated land.

The Environment Agency¹ may issue guidance to any local authority² with respect to the exercise or performance of the authority's powers or duties under these provisions³ in relation to any particular contaminated land⁴; and in exercising or performing those powers or duties in relation to that land the authority must have regard to any such guidance so issued⁵.

A local authority must, at the written request of the Environment Agency, furnish the Environment Agency with certain information⁶ that the Environment Agency may require for the purpose of enabling it to issue guidance for the above purposes⁷.

1 As to the Environment Agency see PARAS 68 et seq, 761 note 6.

2 As to the meaning of 'local authority' see PARA 99.

3 I.e the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC). As to Pt IIA generally see PARA 761 note 1.

4 Environmental Protection Act 1990 s 78V(1) (s 78V added by the Environment Act 1995 s 57). As to the meaning of 'contaminated land' see PARA 761.

5 Environmental Protection Act 1990 s 78V(1) (as added: see note 4). If and to the extent that any guidance issued under s 78V(1) to a local authority is inconsistent with any guidance issued under Pt IIA by the Secretary of State, the local authority must disregard the guidance under s 78V(1): s 78V(2) (as so added). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

6 The information to which the Environmental Protection Act 1990 s 78V(3) applies is such information as the local authority may have, or may reasonably be expected to obtain, with respect to any contaminated land in its area, being information which the authority has acquired, or may acquire, in the exercise of its functions under Pt IIA: s 78V(4) (as added: see note 4).

7 Environmental Protection Act 1990 s 78V(3) (as added: see note 4). The purposes referred to in the text are those of s 78V(1): see the text and notes 1-4.

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785. Guidance by the Secretary of State to the Environment Agency.

The Secretary of State¹ may issue guidance to the Environment Agency² with respect to the exercise or performance of its powers or duties in relation to contaminated land³; and in exercising or performing those powers or duties the Environment Agency must have regard to any such guidance so issued⁴.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the Environment Agency see PARAS 68 et seq, 761 note 6.

3 Ie its powers or duties under the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC). As to Pt IIA generally see PARA 761 note 1.

4 Environmental Protection Act 1990 s 78W(1) (s 78W added by the Environment Act 1995 s 57). The duty imposed on the Environment Agency by the Environmental Protection Act 1990 s 78W(1) is without prejudice to any duty imposed by any other provision of Pt IIA on the Environment Agency to act in accordance with guidance issued by the Secretary of State: s 78W(2) (as so added).

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786. General provisions with respect to guidance by the Secretary of State.

Any power of the Secretary of State¹ to issue guidance under Part IIA of the Environmental Protection Act 1990² is only exercisable after consultation with the Environment Agency³ and such other bodies or persons as he may consider it appropriate to consult in relation to the guidance in question⁴. A draft of any guidance proposed to be issued⁵ must be laid before each House of Parliament and the guidance must not be issued until after the period of 40 days beginning with the day on which the draft was so laid or, if the draft is laid on different days, the later of the two days⁶.

The Secretary of State must arrange for any guidance issued by him under these provisions to be published in such manner as he considers appropriate⁷.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Ie the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC). As to Pt IIA generally see PARA 761 note 1. As to the Secretary of State's guidance see Department of the Environment, Transport and the Regions (DETR) Circular 2/2000 (Contaminated Land).

3 As to the Environment Agency see PARAS 68 et seq, 761 note 6.

4 Environmental Protection Act 1990 s 78YA(1) (s 78YA added by the Environment Act 1995 s 57).

5 Ie under the Environmental Protection Act 1990 s 78A(2), (5), s 78B(2), s 78F(6) or (7): see PARAS 761-762, 767.

6 Environmental Protection Act 1990 s 78YA(2) (as added: see note 4). If, within the period mentioned in s 78YA(2), either House of Parliament resolves that the guidance, the draft of which was laid before it, should not be issued, the Secretary of State must not issue that guidance: s 78YA(3) (as so added). In reckoning any period of 40 days for the purposes of s 78YA(2) or s 78YA(3), no account may be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 78YA(4) (as so added).

7 Environmental Protection Act 1990 s 78YA(5) (as added: see note 4).

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787. Radioactivity.

Except as provided by regulations¹, nothing in Part IIA of the Environmental Protection Act 1990² applies in relation to harm³, or pollution of controlled waters⁴, so far as attributable to any radioactivity possessed by any substance⁵; but regulations may:

- 1924 (1) provide for prescribed⁶ provisions of Part IIA of the Environmental Protection Act 1990 to have effect with such modifications as the Secretary of State considers appropriate for the purpose of dealing with harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substances⁷; or
- 1925 (2) make such modifications of the Radioactive Substances Act 1993⁸ or any other Act as the Secretary of State considers appropriate⁹.

1 As to the meaning of 'regulations' see PARA 763 note 3. As to the making of regulations see PARA 763 note 3. As to the laying down of basic safety standards in relation to land contaminated by reason of radioactive substances see the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005, SI 2005/3467. As to modifications see also the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379 (amended by SI 2007/3245; and SI 2008/520); the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006, SI 2006/2988 (amended by SI 2007/3250; and SI 2008/521); and PARA 761 et seq.

2 Ie the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC). As to Pt IIA generally see PARA 761 note 1.

3 As to the meaning of 'harm' see PARA 761 note 4.

4 As to the meaning of 'pollution of controlled waters' see PARA 761 note 6.

5 Environmental Protection Act 1990 s 78YC (ss 78A, 78YC added by the Environment Act 1995 s 57). As to the meaning of 'substance' see PARA 761 note 3.

6 'Prescribed' means prescribed by regulations (see note 1): Environmental Protection Act 1990 s 78A(1), (9) (as added: see note 5).

7 Environmental Protection Act 1990 s 78YC(a) (as added: see note 5). See note 1. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

8 See **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1450 et seq.

9 Environmental Protection Act 1990 s 78YC(b) (as added: see note 5). See note 1.

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13. INJURIOUS AND HAZARDOUS SUBSTANCES

788. European Union legislation.

There is European Union legislation relating to hazardous substances, which is concerned with the control of major accident hazards¹ and the use of genetically modified organisms². The control of major accident hazards is generally dealt with elsewhere in this work³. EU legislation relating to the use of genetically modified organisms is implemented in England and Wales by Part VI of the Environmental Protection Act 1990⁴ and regulations made under it⁵.

1 See PARA 45. As to the implementation of the European Union legislation in England and Wales see eg the Planning (Control of Major Accident Hazards) Regulations 1999, SI 1999/981; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 10, vol 46(3) (Reissue) PARA 1211. See also the Control of Major Accident Hazards Regulations 1999, SI 1999/743; and **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 662 et seq.

2 See PARA 46. As to genetically modified organisms see PARA 792 et seq.

3 See **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1230 et seq; **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 662 et seq. As to general risks see also **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 583 et seq.

An important recent measure is European Parliament and EC Council Regulation 1907/2006 (OJ L396 30.12.2006 p 1; corrected version in OJ L136, 29.5.2007, p 3) concerning the registration, evaluation, authorisation and restriction of chemicals ('REACH'): see PARAS 35, 338, 790. Also important is the EU policy on pesticides set out in Commission Communication of 12 July 2006: *A thematic strategy on the sustainable use of pesticides* (COM (2006) 372 final); and EC Council Directive 91/414 (OJ L230, 19.8.91, p 1) concerning the placing of plant protection products on the market (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1036 et seq).

4 See the Environmental Protection Act 1990 Pt VI (ss 106-127); and PARA 793 et seq.

5 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831; and PARA 813 et seq.

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789. Advisory Committee on Hazardous Substances.

The Secretary of State¹ may by order establish a committee to give him advice in relation to the exercise of the power to make regulations prohibiting or restricting the importation, use supply or storage of injurious substances or articles². In exercise of this power, the Advisory Committee on Hazardous Substances was established in 1991³.

The Secretary of State must appoint the members of the committee, and must appoint one of those members to be chairman⁴. The committee must include persons who appear to the Secretary of State to be representative of:

- 1926 (1) persons engaged in carrying on industrial or commercial undertakings⁵;
- 1927 (2) persons having scientific knowledge of matters concerning pollution of the environment⁶;
- 1928 (3) bodies concerned with the protection or improvement of the environment⁷; and
- 1929 (4) bodies concerned with the protection of persons using substances⁸ or articles which are subject to regulation⁹.

The Secretary of State may make provision by regulations with respect to the terms on which members of the committee are to hold and vacate office, including the terms on which any person appointed as chairman is to hold and vacate office as chairman¹⁰. The Secretary of State must provide the committee with such services and other facilities as appear to him to be necessary or expedient for the proper performance of the committee's functions¹¹. The Secretary of State may pay to the members of the committee such remuneration (if any) and such allowances as may be determined by the Secretary of State with the consent of the Treasury¹².

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Environmental Protection Act 1990 s 140(5). The power referred to in the text is the power to make regulations under the Environmental Protection Act 1990 s 140: see PARA 790.

The committee is subject to investigation by the Parliamentary Commissioner for Administration: see the Parliamentary Commissioner Act 1967 s 4(1), Sch 2; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 43.

3 See the Advisory Committee on Hazardous Substances Order 1991, SI 1991/1487.

4 Environmental Protection Act 1990 s 140(5), Sch 12 para 1.

5 Environmental Protection Act 1990 Sch 12 para 2(a).

6 Environmental Protection Act 1990 Sch 12 para 2(b). See PARAS 790 note 7, 791 note 2.

7 Environmental Protection Act 1990 Sch 12 para 2(c).

8 See PARAS 790 note 6, 791 note 3.

9 Environmental Protection Act 1990 Sch 12 para 2(d). The reference in the text is a reference to regulation under s 140 (see PARA 790) or s 142 (see PARA 791).

10 Environmental Protection Act 1990 Sch 12 para 3. See the Advisory Committee on Hazardous Substances (Terms of Office) Regulations 1991, SI 1991/1488.

11 Environmental Protection Act 1990 Sch 12 para 4.

12 Environmental Protection Act 1990 Sch 12 para 5. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

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790. Power to prohibit or restrict the importation, use, supply or storage of injurious substances or articles.

The Secretary of State¹ may by regulations prohibit or restrict:

- 1930 (1) the importation into and the landing and unloading in the United Kingdom²;
- 1931 (2) the use for any purpose³;
- 1932 (3) the supply for any purpose⁴; and
- 1933 (4) the storage⁵,

of any specified substance⁶ or article if he considers it appropriate to do so for the purpose of preventing the substance or article from causing pollution of the environment⁷ or harm to human health or to the health of animals or plants⁸. Any such prohibition or restriction may apply: (a) in all, or only in specified, areas⁹; (b) in all, or only in specified, circumstances or if conditions imposed by the regulations are not complied with¹⁰; and (c) to all, or only to specified descriptions of, persons¹¹.

The regulations may:

- 1934 (i) confer on the Secretary of State power to direct that any substance or article whose use, supply or storage is prohibited or restricted is to be treated as waste or controlled waste¹² of any description and, in relation to any such substance or article, to apply, with or without modification, specified provisions of Part II of the Environmental Protection Act 1990¹³, or to direct that it be disposed of or treated in accordance with the direction¹⁴;
- 1935 (ii) confer on the Secretary of State power, where a substance or article has been imported, landed or unloaded in contravention of a prohibition or restriction imposed under head (1) above, to require that the substance or article be disposed of or treated in or removed from the United Kingdom¹⁵;
- 1936 (iii) confer powers¹⁶ on persons authorised for any purpose of the regulations by the Secretary of State or any local or other authority¹⁷; and
- 1937 (iv) include such other incidental and supplemental, and such transitional provisions, as the Secretary of State considers appropriate¹⁸.

The regulations may provide that a person who contravenes or fails to comply with a specified provision of the regulations or causes or permits another person to contravene or fail to comply with a specified provision of the regulations commits an offence and may prescribe the maximum penalty for the offence¹⁹.

It is the duty of the Secretary of State before he makes any regulations²⁰:

- 1938 (A) to consult the Advisory Committee on Hazardous Substances²¹ about the proposed regulations²²;
- 1939 (B) having consulted the committee, to publish in the London Gazette and, if the regulations apply in Scotland or Northern Ireland, the Edinburgh Gazette or, as the case may be, the Belfast Gazette and in any other publication which he

considers appropriate, a notice indicating the effect of the proposed regulations and giving certain information²³; and
 1940 (c) to consider any representations which are made to him in accordance with the notice²⁴.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Environmental Protection Act 1990 s 140(1)(a). As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 Environmental Protection Act 1990 s 140(1)(b).

4 Environmental Protection Act 1990 s 140(1)(c).

5 Environmental Protection Act 1990 s 140(1)(d).

6 For these purposes, 'substance' means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour; and it includes mixtures of substances: Environmental Protection Act 1990 s 140(11). 'Specified' means specified in the regulations (see note 8): s 140(11).

7 For these purposes, the 'environment' means the air, water and land, or any of those media, and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground: Environmental Protection Act 1990 s 140(11).

8 Environmental Protection Act 1990 s 140(1). As to the regulations made or having effect under s 140 see the Control of Pollution (Anglers' Lead Weights) Regulations 1986, SI 1986/1992 (amended by SI 1993/49); the Environmental Protection (Restriction on Use of Lead Shot) (England) Regulations 1999, SI 1999/2170 (amended by SI 2002/2102; and SI 2003/2512); the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002, SI 2002/528 (amended by SI 2006/1510; and SI 2008/91); and the Environmental Protection (Restriction on Use of Lead Shot) (Wales) Regulations 2002, SI 2002/1730. See also the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000, SI 2000/1043 (amended by SI 2000/3359; SI 2005/894; and SI 2005/1806); the REACH Enforcement Regulations 2008, SI 2008/2852; and the Ozone-Depleting Substances (Qualifications) Regulations 2009, SI 2009/216. The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000, SI 2000/1043 relate to EC Council Directive 96/59 (OJ L243, 24.9.96, p 31) on the disposal of polychlorinated biphenyls and polychlorinated terphenyls; and the REACH Enforcement Regulations 2008, SI 2008/2852, are for the enforcement of European Parliament and EC Council Regulation 1907/2006 (OJ L396 30.12.2006 p 1; corrected version in OJ L136, 29.5.2007, p 3) concerning the registration, evaluation, authorisation and restriction of chemicals ('REACH'): see also PARAS 35, 338.

9 Environmental Protection Act 1990 s 140(2)(a).

10 Environmental Protection Act 1990 s 140(2)(b).

11 Environmental Protection Act 1990 s 140(2)(c).

12 See PARA 620 et seq.

13 I.e. the Environmental Protection Act 1990 Pt II (ss 29-78).

14 Environmental Protection Act 1990 s 140(3)(a).

15 Environmental Protection Act 1990 s 140(3)(b). The Secretary of State may, by regulations under these provisions, direct that, for the purposes of any power conferred on him under s 140(3)(b), any prohibition or restriction on the importation into or the landing and unloading in the United Kingdom imposed: (1) by or under any Community instrument; or (2) by or under any enactment, is to be treated as imposed under s 140(1)(a) (see head (1) in the text) and any power conferred on him under s 140(3)(b) is exercisable accordingly: s 140(4). See note 8.

16 I.e. powers corresponding to those conferred by the Environment Act 1995 s 108 (see PARA 794): see the Environmental Protection Act 1990 s 140(3)(c) (amended by SI 1999/1108).

17 Environmental Protection Act 1990 s 140(3)(c) (as amended: see note 16).

18 Environmental Protection Act 1990 s 140(3)(d).

19 Environmental Protection Act 1990 s 140(9). No offence under the regulations may be made punishable with imprisonment for more than two years or punishable on summary conviction with a fine exceeding level 5 on the standard scale (if not calculated on a daily basis) or, in the case of a continuing offence, exceeding one-tenth of the level on the standard scale specified as the maximum penalty for the original offence: s 140(10). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

20 In other than regulations under the Environmental Protection Act 1990 s 140(4) (see note 15): see s 140(6). The Secretary of State may make regulations under s 140 in relation to any substance or article without observing the requirements of s 140(6) where it appears to him that there is an imminent risk, if those requirements are observed, that serious pollution of the environment will be caused: s 140(7).

The Secretary of State may, after performing the duty imposed on him by s 140(6) with respect to any proposed regulations, make the regulations either in the form of the draft mentioned in s 140(6)(b) (see note 23), or in that form with such modifications as he considers appropriate; but the Secretary of State must not make any regulations incorporating modifications unless he is of the opinion that it is appropriate for the requirements of s 140(6) to be disregarded: s 140(8).

21 See PARA 789.

22 Environmental Protection Act 1990 s 140(6)(a).

23 Environmental Protection Act 1990 s 140(6)(b). The notice must specify: (1) the date on which it is proposed that the regulations will come into force; (2) a place where a draft of the proposed regulations may be inspected free of charge by members of the public during office hours; and (3) a period of not less than 14 days, beginning with the date on which the notice is first published, during which representations in writing may be made to the Secretary of State about the proposed regulations: see s 140(6)(b).

24 Environmental Protection Act 1990 s 140(6)(c).

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791. Powers to obtain information about potentially hazardous substances.

The Secretary of State¹ may, for the purpose of assessing their potential for causing pollution of the environment² or harm to human health, by regulations make provision for and in connection with the obtaining of relevant information³ relating to substances which may be specified by him by order for these purposes⁴. The Secretary of State must not make such an order specifying any substance:

- 1941 (1) which was first supplied in any member state on or after 18 September 1981⁵; or
- 1942 (2) in so far as it is a regulated substance for the purposes of any relevant enactment⁶.

The Secretary of State must not make an order under these provisions specifying any substance without consulting the Advisory Committee on Hazardous Substances⁷ except where it appears to him that information about the substance needs to be obtained urgently⁸.

The regulations may:

- 1943 (a) prescribe the descriptions of relevant information which are to be furnished under these provisions in relation to specified substances⁹;
- 1944 (b) impose requirements on manufacturers, importers or suppliers generally to furnish information prescribed under head (a) above¹⁰;
- 1945 (c) provide for the imposition of requirements on manufacturers, importers or suppliers generally to furnish relevant information relating to products or articles containing specified substances in relation to which information has been furnished in pursuance of head (b) above¹¹;
- 1946 (d) provide for the imposition of requirements on particular manufacturers, importers or suppliers to furnish further information relating to specified substances in relation to which information has been furnished in pursuance of head (b) above¹²;
- 1947 (e) provide for the imposition of requirements on particular manufacturers or importers to carry out tests of specified substances and to furnish information of the results of the tests¹³;
- 1948 (f) authorise persons to comply with requirements to furnish information imposed on them by or under the regulations by means of representative persons or bodies¹⁴;
- 1949 (g) impose restrictions on the disclosure of information obtained under these provisions and provide for determining what information is, and what information is not, to be treated as furnished in confidence¹⁵;
- 1950 (h) create offences¹⁶;
- 1951 (i) make any public authority designated by the regulations responsible for the enforcement of the regulations to such extent as may be specified in the regulations¹⁷;
- 1952 (j) include such other incidental and supplemental, and such transitional, provisions as the Secretary of State considers appropriate¹⁸.

The Secretary of State must have regard, in imposing or providing for the imposition of any requirement under head (b), (c), (d) or (e) above, to the cost likely to be involved in complying with the requirement¹⁹.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 For these purposes, the 'environment' means the air, water and land or any of them: Environmental Protection Act 1990 s 142(6).

3 For these purposes, 'relevant information', in relation to substances, products or articles, means information relating to their properties, production, distribution, importation or use or intended use and, in relation to products or articles, to their disposal as waste: Environmental Protection Act 1990 s 142(6). For these purposes, 'substance' means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour and it includes mixtures of substances: s 142(6).

4 Environmental Protection Act 1990 s 142(1). At the date at which this volume states the law no such regulations had been made. Certain functions under s 142 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in the Environmental Protection Act 1990 s 142 are specified for the purposes of s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW**.

5 Environmental Protection Act 1990 s 142(2)(a).

6 Environmental Protection Act 1990 s 142(2)(b). The enactments which are relevant for these purposes are the following: the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (see **EXPLOSIVES**); the Radioactive Substances Act 1993 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1340 et seq); the Medicines Act 1968 Pt II (ss 6-50) (licences etc) (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 42 et seq), Pt III (ss 51-68) (sale and supply) (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 133 et seq), Pt VIII (ss 104-136) (miscellaneous and supplementary provisions) (see **MEDICINAL PRODUCTS AND DRUGS**); the Agriculture Act 1970 Pt IV (ss 66-87) (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 941 et seq); the Misuse of Drugs Act 1971 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 237 et seq); the Food and Environment Protection Act 1985 Pt III (ss 16-19) (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1036 et seq); the Food Safety Act 1990 (see **FOOD**); and the Veterinary Medicines Regulations 2006, SI 2006/2407 (revoked and replaced by the Veterinary Medicines Regulations 2007, SI 2007/2539) (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 996 et seq): see the Environmental Protection Act 1990 s 142(7) (amended by the Radioactive Substances Act 1993 Sch 4 para 8; SI 2005/1082; and SI 2006/2407). A substance is a regulated substance for the purposes of any such enactment in so far as any prohibition, restriction or requirement is imposed in relation to it by or under the enactment for the purposes of that enactment: Environmental Protection Act 1990 s 142(7) (as so amended).

7 See PARA 789.

8 Environmental Protection Act 1990 s 142(3).

9 Environmental Protection Act 1990 s 142(4)(a).

10 Environmental Protection Act 1990 s 142(4)(b).

11 Environmental Protection Act 1990 s 142(4)(c).

12 Environmental Protection Act 1990 s 142(4)(d).

13 Environmental Protection Act 1990 s 142(4)(e).

14 Environmental Protection Act 1990 s 142(4)(f).

15 Environmental Protection Act 1990 s 142(4)(g).

16 Environmental Protection Act 1990 s 142(4)(h). The power to create offences is subject to the limitation that no offence is to be punishable with imprisonment or punishable on summary conviction with a fine exceeding level 5 on the standard scale: see s 142(4)(h). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

17 Environmental Protection Act 1990 s 142(4)(i).

- 18 Environmental Protection Act 1990 s 142(4)(j).
- 19 Environmental Protection Act 1990 s 142(5).

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14. GENETICALLY MODIFIED ORGANISMS

(1) INTRODUCTION

792. European Union legislation.

There is European Union legislation relating to the use and deliberate release of genetically modified organisms¹, which is implemented in England and Wales by Part VI of the Environmental Protection Act 1990² and regulations made under it³. There is also EU legislation concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms⁴.

¹ See PARA 46. See also PARA 788.

le the Environmental Protection Act 1990 Pt VI (ss 106-127): see PARA 793 et seq.

³ See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831; the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443; the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188; and PARA 793 et seq.

⁴ le European Parliament and EC Council Regulation 1830/2003 (OJ L268, 18.10.2003, p 24) amending European Parliament and EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1): see PARA 46. This Regulation is implemented in England by the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412, which make provision for: enforcement (see reg 3); the appointment of inspectors (see reg 4); powers of entry (see reg 5); information to inspectors (see reg 6); notices by inspectors in regard to incorrectly labelled products (see reg 7); offences (and defence) for contravening Community obligations, obstructing inspectors, giving false information (see reg 8 (amended by SI 2008/2598)); offences due to fault of another person (see the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004, SI 2004/2412, reg 9); offences by corporate bodies (see reg 10); penalties and time limits for bringing prosecutions (see regs 11, 12); and service of notices (see reg 13). As to the similar provisions relating to Wales see the Genetically Modified Organisms (Traceability and Labelling) (Wales) Regulations 2005, SI 2005/1914.

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793. Meaning of 'genetically modified organism' and related expressions.

In England and Wales, the control of damage to the environment caused by genetically modified organisms is governed chiefly by Part VI of the Environmental Protection Act 1990¹. The legislation has effect for the purpose of ensuring that all appropriate measures are taken to avoid damage to the environment² which may arise from the escape or release from human control³ of genetically modified organisms⁴. For these purposes, the term 'organism' means any acellular, unicellular or multicellular entity (in any form), other than humans, human embryos or human admixed embryos; and, unless the context otherwise requires, the term also includes any article or substance consisting of or including biological matter⁵.

An organism is 'genetically modified' if any of the genes or other genetic material in the organism:

- 1953 (1) have been artificially modified⁶; or
- 1954 (2) are inherited or otherwise derived, through any number of replications, from genes or other genetic material (from any source) which were so modified⁷.

Genetically modified organisms present in the environment are capable of causing harm⁸ if: (a) they are individually capable, or are present in numbers such that together they are capable, of causing harm⁹; or (b) they are able to produce descendants¹⁰ which will be capable, or which will be present in numbers such that together they will be capable, of causing harm¹¹. A single organism is capable of causing harm either if it is itself capable of causing harm or if it is able to produce descendants which will be so capable¹².

In addition to the general controls referred to above, detailed provision is made as to the control of operations involving the genetic modification of organisms¹³.

1 The Environmental Protection Act 1990 Pt VI (ss 106-127). Part VI, except in so far as it relates to importations of genetically modified organisms, applies to the territorial sea adjacent to England (or Wales) as it applies to England (or Wales); and applies to any area for the time being designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636), as it applies in England: Environmental Protection Act 1990 s 127(2) (amended by SI 2002/2443; and SI 2002/3188). 'Import' means import into the United Kingdom: Environmental Protection Act 1990 s 127(1). As to the meaning of 'United Kingdom' see PARA 1 note 2.

2 The 'environment' includes land, air and water and living organisms supported by any of those media: Environmental Protection Act 1990 s 107(1), (2) (s 107(2) substituted by SI 2002/2443; and SI 2002/3188). 'Damage to the environment' is caused by the presence in the environment of genetically modified organisms which have (or of a single such organism which has) escaped or been released from a person's control and are (or is) capable of causing harm: Environmental Protection Act 1990 s 107(1), (3) (s 107(3) amended by SI 2002/2443; and SI 2002/3188). An organism is regarded as present in the environment notwithstanding that it is present in or on any human or other organism, or any other thing, which is itself present in the environment: Environmental Protection Act 1990 s 107(1), (4). As to the meaning of 'genetically modified organisms' see the text and notes 6-7. As to the meanings of 'escapes', 'release' and 'control' see note 3. As to the meaning of 'organism' see the text and note 5; and as to the meaning of 'harm' see note 8. As to when genetically modified organisms are capable of causing harm see the text and notes 8-12.

3 Organisms of any description are under the 'control' of a person where he keeps them contained by measures designed to limit their contact with humans and the environment and to prevent or minimise the risk of harm: Environmental Protection Act 1990 s 107(1), (9) (amended by SI 2002/2443; and SI 2002/3188).

An organism under a person's control is 'released' if he deliberately causes or permits it to cease to be under his control or the control of any other person and to enter the environment; and such an organism 'escapes' if, otherwise than by being released, it ceases to be under his control or that of any other person and enters the environment: Environmental Protection Act 1990 s 107(1), (10).

4 Environmental Protection Act 1990 s 106(1) (amended by SI 2002/2443; and SI 2002/3188).

5 Environmental Protection Act 1990 s 106(2) (amended by the Human Fertilisation and Embryology Act 2008 s 60(1), (2)).

For the purposes of the Environmental Protection Act 1990 s 106(2): (1) 'human embryo' means an embryo within the meaning given in the provisions of the Human Fertilisation and Embryology Act 1990 (apart from s 4A) (see **MEDICAL PROFESSIONS**) by virtue of s 1(1), (6) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 102); and (2) 'human admixed embryo' has the same meaning as it has by virtue of s 4A(6), (11) (see **MEDICAL PROFESSIONS**): Environmental Protection Act 1990 s 106(3A) (added by the Human Fertilisation and Embryology Act 2008 s 60(1), (3)). Also for the purposes of the Environmental Protection Act 1990 s 106(2), 'biological matter' means anything (other than an entity mentioned in s 106(2)) which consists of or includes: (a) tissue or cells (including gametes or propagules) or subcellular entities, of any kind, capable of replication or of transferring genetic material; or (b) genes or other genetic material, in any form, which are so capable, and it is immaterial, in determining if something is or is not an organism or biological matter, whether it is the product of natural or artificial processes of reproduction and, in the case of biological matter, whether it has ever been part of a whole organism: s 106(3). Where the context permits, a reference to 'reproduction', in relation to an organism, includes a reference to its replication or its transferring genetic material: s 106(7).

6 Environmental Protection Act 1990 s 106(4)(a) (substituted by SI 2002/2443; and SI 2002/3188).

Subject as follows, genes or other genetic material in an organism are 'artificially modified' if they are altered otherwise than by a process which occurs naturally in mating or natural recombination: Environmental Protection Act 1990 s 106(4A) (s 106(4A)-(4D) added by SI 2002/2443; and SI 2002/3188). For these purposes: (1) genes or other genetic material must be taken to be artificially modified if they are altered using such techniques as may be prescribed by regulations made by the Secretary of State for such purposes; (2) genes or other genetic material must not be regarded as artificially modified by reason only of being altered by the use of such techniques as may be so prescribed: Environmental Protection Act 1990 s 106(4B), (4D) (as so added). An organism must be taken not to be a genetically modified organism if it is an organism of a description prescribed by regulations made by the Secretary of State: s 106(4C), (4D) (as so added). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see paras 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to the duty to consult the Food Standards Agency before regulations are made under these provisions see PARA 812 note 5. As to the Food Standards Agency generally see **FOOD** vol 18(2) (Reissue) PARA 225 et seq.

Until the coming into force of the first regulations under head (1) above, genes or other genetic material must be taken, for the purposes of s 106(4), to be artificially modified if they are altered using any of the following techniques: (a) recombinant nucleic acid techniques involving the formation of new combinations of genetic material by the insertion of nucleic acid molecules, produced by whatever means outside an organism, into any virus, bacterial plasmid or other vector system and their incorporation into a host organism in which they do not naturally occur but in which they are capable of continued propagation; (b) techniques involving the direct introduction into an organism of heritable material prepared outside the organism including micro-injection, macro-injection and micro-encapsulation; (c) cell fusion (including protoplast fusion) or hybridisation techniques where live cells with new combinations of heritable genetic material are formed through the fusion of two or more cells by means of methods that do not occur naturally: Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 5(1); Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 6(1). Until the coming into force of the first regulations under head (2) above, genes or other genetic material must not be regarded as artificially modified by reason only of being altered by the use of in vitro fertilisation, natural processes such as conjugation, transduction and transformation, or by the use of polyploidy induction, provided that such techniques do not involve the use of recombinant nucleic acid molecules or genetically modified organisms made by techniques or methods other than: (i) mutagenesis; or (ii) cell fusion (including protoplast fusion) of plant cells of organisms which can exchange genetic material through traditional breeding methods: Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 5(2); Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 6(2). Until the coming into force of the first regulations under the Environmental Protection Act 1990 s 106(4C) (see above), an organism must be taken, for the purposes of Pt VI, not to be a genetically modified organism if it is yielded from the techniques or methods listed in heads (i), (ii) above provided that those techniques or methods did not involve the use of recombinant nucleic acid molecules or genetically modified organisms other than those made by techniques or methods listed in the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 5(2) or the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 6(2): Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 5(3); Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 6(3). For these purposes, 'genetically

modified organisms' means a genetically modified organism or a combination of genetically modified organisms: Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 2; Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 2.

7 Environmental Protection Act 1990 s 106(4)(b).

8 'Harm' means adverse effects as regards the health of humans or the environment: Environmental Protection Act 1990 s 107(1), (6) (s 107(6) substituted by SI 2002/2443; and SI 2002/3188). 'Harmful' and 'harmless' mean respectively, in relation to genetically modified organisms, their being capable or their being incapable of causing harm: Environmental Protection Act 1990 s 107(1), (7). The Secretary of State may by regulations provide, in relation to genetically modified organisms of any description specified in the regulations, that: (1) the capacity of those organisms for causing harm of any description so specified; or (2) harm of any description so specified, is to be disregarded for such purposes of Pt VI as may be so specified: s 107(1), (8). See the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443; and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188.

9 Environmental Protection Act 1990 s 107(1), (5)(a).

10 'Descendant', in relation to a genetically modified organism, means any other organism whose genes or other genetic material is derived, through any number of generations, from that organism by any process of reproduction: Environmental Protection Act 1990 s 127(1).

11 Environmental Protection Act 1990 s 107(1), (5)(b).

12 Environmental Protection Act 1990 s 107(1), (5).

13 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831; and PARA 813 et seq.

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(2) ACQUISITION, IMPORTATION, RELEASE, MARKETING AND KEEPING OF GENETICALLY MODIFIED ORGANISMS

(i) General Controls

794. Risk assessment and notification requirements.

No person may import¹ or acquire², release³ or market⁴ any genetically modified organisms unless, before doing that act⁵:

- 1955 (1) he has carried out an assessment of any risks there are (by reference to the nature of the organisms and the manner in which he intends to keep them after their importation or acquisition or, as the case may be, to release or market them) of damage to the environment⁶ being caused as a result of doing that act⁷; and
- 1956 (2) in such cases and circumstances as may be prescribed⁸, he has given the Secretary of State such notice of his intention of doing that act and such information as may be prescribed⁹.

A person who is keeping genetically modified organisms must, in such cases or circumstances and at such times or intervals as may be prescribed¹⁰: (a) carry out an assessment of any risks there are of damage to the environment being caused as a result of his continuing to keep them¹¹; and (b) give the Secretary of State notice of the fact that he is keeping the organisms and such information as may be prescribed¹².

It is the duty of a person who carries out an assessment under head (1) or head (a) above to keep, for the prescribed period, such a record of the assessment as may be prescribed¹³. A person required by head (2) or head (b) above to give notice to the Secretary of State must give the Secretary of State such further information as the Secretary of State may by notice in writing require¹⁴.

The Secretary of State may at any time:

- 1957 (i) give directions to a person wishing to import, acquire, release or market genetically modified organisms¹⁵ requiring that person to apply for a consent before doing the act in question¹⁶; or
- 1958 (ii) give directions to a person who is keeping genetically modified organisms¹⁷ requiring that person, before such date as may be specified in the direction, to apply for a consent authorising him to continue keeping the organisms in question¹⁸.

In such cases, the person given directions is, from the specified date, required to obtain consent¹⁹.

It is an offence to contravene or fail to comply with certain of the provisions described above, or to make a false statement or false entry in a record in connection with these provisions²⁰.

There are also specific risk assessment and notification requirements in relation to operations involving the genetic modification of organisms²¹.

1 As to the meaning of 'import' see PARA 793 note 1.

2 'Acquire', in relation to genetically modified organisms, includes any method by which such organisms may come to be in a person's possession, other than by their being imported: Environmental Protection Act 1990 s 127(1). As to the meanings of 'genetically modified organisms' and 'organisms' see PARA 793.

3 As to the meaning of 'released' see PARA 793 note 3.

4 Genetically modified organisms of any description are 'marketed' by a person when products consisting of or including such organisms are placed on the market by being made available to other persons, whether or not for consideration: Environmental Protection Act 1990 s 107(1), (11) (s 107(11) substituted by SI 2002/2443; and SI 2002/3188).

5 Environmental Protection Act 1990 s 108(1). This is expressed to be subject to s 108(2) (not yet in force) and s 108(7) (see note 8).

Section 108(1) does not apply to a person proposing to do an act mentioned in that provision who is required under s 111(1)(a) (see PARA 797) to have a consent before doing that act: s 108(2). At the date at which this volume states the law no order had been made bringing s 108(2) into force.

Regulations under s 108 may provide for exemptions or for the granting by the Secretary of State, or by the Secretary of State and the Food Standards Agency acting jointly, of exemptions to particular persons or classes of person, from the requirements of s 108(1) or s 108(3) in such cases or circumstances, and to such extent, as may be prescribed: s 108(7) (amended by the Food Standards Act 1999 Sch 3 para 17). For these purposes, 'prescribed' means prescribed by the Secretary of State in regulations under the Environmental Protection Act 1990 s 108: s 108(10). As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to regulations made under these provisions see the Genetically Modified Organisms (Risk Assessment) (Records and Exemptions) Regulations 1996, SI 1996/1106 (amended by SI 1997/1900; SI 2000/2831; and SI 2005/2759).

Regulations under the Environmental Protection Act 1990 s 108 may:

147 (1) prescribe the manner in which assessments under s 108(1) or s 108(3) (see the text and notes 10-12) are to be carried out and the matters which must be investigated and assessed (s 108(9)(a));

148 (2) prescribe minimum periods of notice between the giving of a notice under head (2) in the text and the doing of the act in question (s 108(9)(b));

149 (3) make provision allowing the Secretary of State to shorten or to extend any such period (s 108(9)(c)); or

150 (4) prescribe maximum intervals at which assessments under head (a) in the text must be carried out (s 108(9)(d)).

The regulations may make different provision for different cases and different circumstances: s 108(9). As to the duty to consult the Food Standards Agency before regulations are made under these provisions see PARA 812 note 5. As to the Food Standards Agency generally see **FOOD** vol 18(2) (Reissue) PARA 225 et seq.

6 As to the meanings of 'environment' and 'damage to the environment' see PARA 793 note 2.

7 Environmental Protection Act 1990 s 108(1)(a). A person who imports or acquires genetically modified organisms is exempt from the requirements of s 108(1)(a) in so far as they relate to the protection of human health: Genetically Modified Organisms (Risk Assessment) (Records and Exemptions) Regulations 1996, SI 1996/1106, reg 3(1). Such a person is also exempt from the requirements of the Environmental Protection Act 1990 s 108(1)(a) where the organisms to be imported or acquired: (1) are, within the meaning of the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1), genetically modified micro-organisms (see PARA 813); (2) are organisms, within the meaning of reg 2(1) (see PARA 813 note 3), other than micro-organisms within the meaning of reg 2(1), which are modified by means of: (a) the application of the techniques which, by virtue of reg 2(1), Sch 2 Pt II, are not considered to result in genetic modification for the purposes of the definition of that expression in reg 2(1); or (b) the application of the techniques to which, by virtue of reg 3(2), Sch 2 Pt III, the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, do not apply; (3) are or are contained in a medicinal product for human or veterinary use which is the subject of a market authorisation under EC Council Regulation 2309/93 (OJ L214, 24.08.1993, p 1) or

European Parliament and EC Council Regulation 726/2004 (OJ L329, 16.12.2005, p 4) laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 19 et seq); (4) consist of, or are included in, an approved product as defined in the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 2 (and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 2) which is imported or acquired in accordance with the conditions and limitations to which the use of the product is subject; or (5) are or are contained in a novel food or novel food ingredient which is authorised for marketing in accordance with the provisions of EC Regulation 258/97 (OJ L43, 14.02.1997, p 1) (see **FOOD** vol 18(2) (Reissue) PARA 349 et seq): Genetically Modified Organisms (Risk Assessment) (Records and Exemptions) Regulations 1996, SI 1996/1106, reg 3(2) (amended by SI 1997/1900; SI 2000/2831; and SI 2005/2759). 'Approved product' means a product permitted to be marketed by a consent granted under the Environmental Protection Act 1990 s 111(1) (see PARA 797) by a person other than the Secretary of State or otherwise in accordance with EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1) on the deliberate release of genetically modified organisms into the environment arts 15(3), 17(6), 18(2) (amended by EC Regulation 1830/2003 (OJ L268, 18.10.2003, p 24)) or EC Council Directive 1990/220 (OJ L117, 8.5.1990, p 15) on the deliberate release into the environment of genetically modified organisms art 13(4) (repealed): see the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 2; and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 2.

As to the procedure which the Secretary of State must follow on receipt of any new information which affects the risk assessment for the marketing of genetically modified organisms see the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 31; and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 32.

8 See note 5.

9 Environmental Protection Act 1990 s 108(1)(b). At the date at which this volume states the law no regulations had been made for the purposes of s 108(1)(b).

10 Environmental Protection Act 1990 s 108(3). This is expressed to be subject to s 108(4) (not yet in force) and s 108(7) (see note 5). Section 108(3) does not apply to a person who is keeping genetically modified organisms and is required under s 111(2) (see PARA 797) to have a consent authorising him to continue to keep the organisms: s 108(4). At the date at which this volume states the law no order had been made bringing s 108(4) into force. At the date at which this volume states the law no regulations have been made for the purposes of s 108(3).

'Consent' means a consent granted under s 111 (see PARA 797); and a reference to the limitations or conditions to which a consent is subject is a reference to the limitations or conditions subject to which the consent for the time being has effect: s 127(1).

11 Environmental Protection Act 1990 s 108(3)(a). At the date at which this volume states the law no order had been made bringing s 108(3)(a) into force.

12 Environmental Protection Act 1990 s 108(3)(b). At the date at which this volume states the law no regulations have been made for the purposes of s 108(3)(b).

13 Environmental Protection Act 1990 s 108(5). The period for which a person who carries out an assessment under s 108(1)(a) must keep a record of that assessment is ten years: Genetically Modified Organisms (Risk Assessment) (Records and Exemptions) Regulations 1996, SI 1996/1106, reg 2.

14 Environmental Protection Act 1990 s 108(6). At the date at which this volume states the law no order had been made bringing s 108(6) into force.

15 Is a person falling within the Environmental Protection Act 1990 s 108(1): see the text and notes 1-9.

16 Environmental Protection Act 1990 s 108(8)(a). At the date at which this volume states the law no order had been made bringing s 108(8) into force.

17 Is a person falling within the Environmental Protection Act 1990 s 108(3): see the text and notes 10-12.

18 Environmental Protection Act 1990 s 108(8)(b). See note 16.

19 Environmental Protection Act 1990 s 108(8). In such circumstances, the person is subject to s 111 (see PARA 797), in place of the requirements of s 108: s 108(8). See note 16.

20 See the Environmental Protection Act 1990 s 118; and PARA 804.

21 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831; and PARA 813 et seq.

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795. General duties relating to importation, acquisition, keeping, release or marketing of organisms.

As from a day to be appointed¹, a person who is proposing to import² or acquire³ any genetically modified organisms⁴, or who is keeping any such organisms, or who is proposing to release⁵ or market⁶ any such organisms, is⁷ subject to the applicable duties as specified below⁸.

A person who proposes to import or acquire genetically modified organisms: (1) must take all reasonable steps to identify, by reference to the nature of the organisms and the manner in which he intends to keep them (including any precautions to be taken against their escaping⁹ or causing damage to the environment¹⁰), what risks there are of damage to the environment being caused as a result of their importation or acquisition¹¹; and (2) must not import or acquire the organisms if it appears that, despite any precautions which can be taken, there is a risk of damage to the environment being caused as a result of their importation or acquisition¹².

A person who is keeping genetically modified organisms: (a) must take all reasonable steps to keep himself informed of any damage to the environment which may have been caused as a result of his keeping the organisms and to identify what risks there are of damage to the environment being caused as a result of his continuing to keep them¹³; (b) must cease keeping the organisms if, despite any additional precautions which can be taken, it appears at any time that there is a risk of damage to the environment being caused as a result of his continuing to keep them¹⁴; and (c) must use the best available techniques not entailing excessive cost for keeping the organisms under his control¹⁵ and for preventing any damage to the environment being caused as a result of his continuing to keep the organisms¹⁶. Where a person is required by head (b) above to cease keeping the organisms he must dispose of them as safely and as quickly as practicable, and head (c) above continues to apply until he has done so¹⁷.

A person who proposes to release genetically modified organisms: (i) must take all reasonable steps to keep himself informed, by reference to the nature of the organisms and the extent and manner of the release (including any precautions to be taken against their causing damage to the environment), what risks there are of damage to the environment being caused as a result of their being released¹⁸; (ii) must not release the organisms if it appears that, despite the precautions which can be taken, there is a risk of damage to the environment being caused as a result of their being released¹⁹; and (iii) subject to head (ii) above, must use the best available techniques not entailing excessive cost for preventing any damage to the environment being caused as a result of their being released²⁰. Heads (i) to (iii) above also apply, with the necessary modifications, to a person proposing to market organisms²¹.

None of the provisions described above apply:

- 1959 (A) to persons proposing to import or acquire, to release or to market any genetically modified organisms, in cases or circumstances where they are not required to carry out a risk assessment²² before doing that act²³;
- 1960 (B) to persons who are keeping any genetically modified organisms and who were not required to carry out a risk assessment before importing or acquiring them, and have not been required to carry out a risk assessment in respect of the keeping of those organisms since importing or acquiring them²⁴; or
- 1961 (C) to holders of consents²⁵, in the case of acts authorised by those consents²⁶.

Failure to comply with the above requirements is an offence²⁷.

- 1 At the date at which this volume states the law no order had been made bringing the Environmental Protection Act 1990 s 109 into force.
- 2 As to the meaning of 'import' see PARA 793 note 1.
- 3 As to the meaning of 'acquire' see PARA 794 note 2.
- 4 As to the meanings of 'genetically modified organisms' and 'organisms' see PARA 793.
- 5 As to the meaning of 'release' see PARA 793 note 3.
- 6 As to when genetically modified organisms are marketed see PARA 794 note 4.
- 7 This is subject to the Environmental Protection Act 1990 s 109(5) (see the text and notes 22-26): s 109(1).
- 8 Environmental Protection Act 1990 s 109(1). See note 1. The duties referred to are those specified in s 109(2), (3) or (4) (see the text and notes 11-21) as the case may be: s 109(1).
- 9 As to the meaning of 'escape' see PARA 793 note 3.
- 10 As to the meanings of 'environment' and 'damage to the environment' see PARA 793 note 2.
- 11 Environmental Protection Act 1990 s 109(2)(a). See note 1.
- 12 Environmental Protection Act 1990 s 109(2)(b). See note 1.
- 13 Environmental Protection Act 1990 s 109(3)(a). See note 1.
- 14 Environmental Protection Act 1990 s 109(3)(b). See note 1.
- 15 As to the meaning of 'control' see PARA 793 note 3.
- 16 Environmental Protection Act 1990 s 109(3)(c). See note 1.
- 17 Environmental Protection Act 1990 s 109(3). See note 1.
- 18 Environmental Protection Act 1990 s 109(4)(a). See note 1.
- 19 Environmental Protection Act 1990 s 109(4)(b). See note 1.
- 20 Environmental Protection Act 1990 s 109(4)(c). See note 1.
- 21 Environmental Protection Act 1990 s 109(4). See note 1.
- 22 Ie under the Environmental Protection Act 1990 s 108: see PARA 794.
- 23 Environmental Protection Act 1990 s 109(5)(a). See note 1.
- 24 Environmental Protection Act 1990 s 109(5)(b). See note 1.
- 25 As to consents see PARAS 797-798.
- 26 Environmental Protection Act 1990 s 109(5)(c). See note 1.
- 27 See the Environmental Protection Act 1990 s 118; and PARA 804.

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796. Prohibition notices.

The Secretary of State¹ may serve a notice under the following provisions (a 'prohibition notice') on any person he has reason to believe:

- 1962 (1) is proposing to import² or acquire³, release⁴ or market⁵ any genetically modified organisms⁶; or
- 1963 (2) is keeping any such organisms⁷,

if he is of the opinion that doing any such act in relation to those organisms or continuing to keep them, as the case may be, would involve a risk of causing damage to the environment⁸.

A prohibition notice may prohibit a person from doing an act mentioned in head (1) above in relation to any genetically modified organisms or from continuing to keep them, and the prohibition may apply in all cases or circumstances or in such cases or circumstances as may be specified in the notice⁹. A prohibition notice must:

- 1964 (a) state that the Secretary of State is, in relation to the person on whom it is served, of the opinion mentioned above¹⁰;
- 1965 (b) specify what is, or is to be, prohibited by the notice¹¹; and
- 1966 (c) if the prohibition is not to be effective on being served, specify the date on which the prohibition is to take effect¹².

A notice may be served on a person notwithstanding that he may have a consent¹³ authorising any act which is, or is to be, prohibited by the notice¹⁴.

Where a person is prohibited by a prohibition notice from continuing to keep any genetically modified organisms, he must dispose of them as quickly and safely as practicable or, if the notice so provides, as may be specified in the notice¹⁵.

The Secretary of State may at any time withdraw a prohibition notice served on any person by notice given to that person¹⁶.

It is an offence to contravene any prohibition imposed by a prohibition notice¹⁷.

1 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'import' see PARA 793 note 1.

3 As to the meaning of 'acquire' see PARA 794 note 2.

4 As to the meaning of 'release' see PARA 793 note 3.

5 As to when genetically modified organisms are marketed see PARA 794 note 4.

6 Environmental Protection Act 1990 s 110(1)(a). As to the meanings of 'organisms' and 'genetically modified organisms' see PARA 793.

7 Environmental Protection Act 1990 s 110(1)(b). At the date at which this volume states the law s 110 had not been brought into force in relation to the keeping of genetically modified organisms (ie it has only been brought into force in regard to the import, acquisition, release or marketing of such organisms: see s 110(1)(a)).

8 Environmental Protection Act 1990 s 110(1). As to the meanings of 'environment' and 'damage to the environment' see PARA 793 note 2.

As to the power of the Secretary of State to serve a prohibition notice under s 110 on the basis of new or additional information made available since the date of any consent granted under s 111(1) (see PARA 797), or on the basis of a reassessment of existing information, see the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 32; and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 33.

As to the duty of a member state, in relation to placing genetically modified organisms on the market, to inform the EC Commission and other member states if it obtains information which would lead it to withhold consent see Case C-6/99: *Association Greenpeace France v Ministère de l'Agriculture et de la Pêche* [2001] All ER (EC) 791, [2000] All ER (D) 364, ECJ.

9 Environmental Protection Act 1990 s 110(2).

10 Environmental Protection Act 1990 s 110(3)(a). See the text and notes 1-8.

11 Environmental Protection Act 1990 s 110(3)(b).

12 Environmental Protection Act 1990 s 110(3)(c).

13 As to consents see PARAS 797-798.

14 Environmental Protection Act 1990 s 110(3).

15 Environmental Protection Act 1990 s 110(4).

16 Environmental Protection Act 1990 s 110(5).

17 See the Environmental Protection Act 1990 s 118; and PARA 804.

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(ii) Consents

797. Consents required by certain persons.

No person may import¹ or acquire², release³ or market⁴ any genetically modified organisms⁵:

- 1967 (1) in such cases or circumstances as may be prescribed in relation to that act⁶; or
- 1968 (2) in any case where he has been given directions⁷,

except in pursuance of a consent granted by the Secretary of State⁸ and in accordance with any limitations and conditions to which the consent is subject⁹.

No person who has imported or acquired any genetically modified organisms (whether under a consent or not) may continue to keep the organisms:

- 1969 (a) in such cases or circumstances as may be prescribed, after the end of the prescribed period¹⁰; or
- 1970 (b) if he has been given directions¹¹, after the date specified in the directions¹²,

except in pursuance of a consent granted by the Secretary of State and in accordance with any limitations or conditions to which the consent is subject¹³.

An application for a consent must contain such information and be made and advertised in such manner as may be prescribed¹⁴, and must be accompanied by a fee¹⁵. The applicant must, in prescribed circumstances, give such notice of his application to such persons as may be prescribed¹⁶. The Secretary of State may by notice to the applicant require him to furnish such further information specified in the notice, within such period as may be so specified, as he may require for the purpose of determining the application; and if the applicant fails to furnish the information within the specified period, the Secretary of State may refuse to proceed with the application¹⁷. Where an applicant for consent for releasing or marketing genetically modified organisms becomes aware, before his application is either granted or rejected, of any new information with regard to any risks there are of damage to the environment¹⁸ being caused as a result of the organisms being released or marketed, he must notify the Secretary of State of that new information forthwith¹⁹.

Regulations under these provisions may provide for exemptions, or for the granting by the Secretary of State, or by the Secretary of State and the Food Standards Agency²⁰ acting jointly, of exemptions to particular persons or classes of person, from: (i) any requirement²¹ to have a consent; or (ii) any of the requirements to be fulfilled under the regulations by an applicant for a consent, in such cases or circumstances as may be prescribed²².

Where an application for a consent is duly made to him, the Secretary of State may grant the consent subject to such limitations and conditions as may be imposed²³ or he may refuse the application²⁴. The conditions attached to a consent may include conditions which are to continue to have effect notwithstanding that the holder has completed or ceased the act or acts authorised by the consent²⁵.

The Secretary of State may at any time, by notice given to the holder of a consent, revoke the consent or vary the consent (whether by attaching new limitations and conditions or by revoking or varying any limitations and conditions to which it is at that time subject)²⁶.

The Food Standards Agency must be consulted before any consent is granted or varied²⁷.

Contravention of the prohibition on doing anything without a consent, making a false statement or entry in any record, or forging any document required by these provisions, is an offence²⁸.

1 As to the meaning of 'import' see PARA 793 note 1.

2 As to the meaning of 'acquire' see PARA 794 note 2.

3 As to the meaning of 'release' see PARA 793 note 3.

4 As to when genetically modified organisms are marketed see PARA 794 note 4.

5 As to the meanings of 'organisms' and 'genetically modified organisms' see PARA 793.

6 Environmental Protection Act 1990 s 111(1)(a). For these purposes, 'prescribed' means prescribed in regulations under s 111; and regulations under s 111 may make different provision for different cases and different circumstances: see s 111(11). As to the regulations that have been made under s 111 see the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443; and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188.

7 Environmental Protection Act 1990 s 111(1)(b). As to the giving of such directions see s 108(8)(a); and PARA 794.

8 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Environmental Protection Act 1990 s 111(1). This is expressed to be subject to s 111(7) (see the text and note 22). It is not necessary that the releasor himself be the consent holder, merely that the release be in pursuance of a consent: *R v Secretary of State for the Environment, ex p Watson* [1998] 30 LS Gaz R 26, [1998] EGCS 122, CA.

10 Environmental Protection Act 1990 s 111(2)(a). See note 6.

11 *Ie* under the Environmental Protection Act 1990 s 108(8)(b): see PARA 794.

12 Environmental Protection Act 1990 s 111(2)(b).

13 Environmental Protection Act 1990 s 111(2). This is expressed to be subject to s 111(7) (see the text and note 22). A person who is required under s 111(2) to cease keeping any genetically modified organisms must dispose of them as quickly and safely as practicable: s 111(3). At the date at which this volume states the law no order had been made bringing s 111(3) into force.

14 See note 6. As to the information which must be included in a consent to market granted by the Secretary of State under the Environmental Protection Act 1990 s 111(1) see the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 28; and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 29.

15 Environmental Protection Act 1990 s 111(4). As to the required fee see s 113; and PARA 799.

16 Environmental Protection Act 1990 s 111(5). See note 6.

17 Environmental Protection Act 1990 s 111(6). A notice under this provision must state the reasons for requiring the further information specified: s 111(6) (amended by SI 2002/2443; and SI 2002/3188).

18 As to the meanings of 'environment' and 'damage to the environment' see PARA 793 note 2.

19 Environmental Protection Act 1990 s 111(6A) (added by SI 1992/3280). An applicant for a consent to release or to market genetically modified organisms who notifies the Secretary of State of any information in accordance with the Environmental Protection Act 1990 s 111(6A) must submit in writing to the Secretary of State a revised version of the original application for consent amended to take account of the new information:

Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 19(2); Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 20(2).

20 As to the Food Standards Agency see **FOOD** vol 18(2) (Reissue) PARA 225 et seq.

21 Is any requirement under the Environmental Protection Act 1990 s 111(1) or (2): see the text and notes 1-13.

22 Environmental Protection Act 1990 s 111(7) (amended by the Food Standards Act 1999 Sch 3 para 17). As to the duty to consult the Food Standards Agency before regulations are made under these provisions see PARA 812 note 5. See note 6.

23 Is under the Environmental Protection Act 1990 s 112: see PARA 798.

24 Environmental Protection Act 1990 s 111(8).

25 Environmental Protection Act 1990 s 111(9).

26 Environmental Protection Act 1990 s 111(10). This power may be used only for the purposes of the Environmental Protection Act 1990, namely health and safety and protection of the environment: *R v Secretary of State for the Environment, ex p Watson* [1998] 30 LS Gaz R 26, [1998] EGCS 122, CA.

27 Environmental Protection Act 1990 s 126(5)(b), (8) (s 126 substituted by the Food Standards Act 1999 Sch 3 para 18).

28 See the Environmental Protection Act 1990 s 118; and PARA 804.

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798. Limitations and conditions included in consents.

The Secretary of State¹ may include in a consent² such limitations and conditions as he may think fit for the purpose of ensuring that all appropriate measures are taken to avoid damage to the environment which may arise from the activity permitted by the consent³. Without prejudice to the generality of this provision, the conditions included in a consent may:

- 1971 (1) require the giving of notice of any fact to the Secretary of State⁴; or
- 1972 (2) prohibit or restrict the keeping, releasing⁵ or marketing⁶ of genetically modified organisms⁷ under the consent in specified cases or circumstances⁸.

Where, under any condition, the holder of a consent is required to cease keeping any genetically modified organisms, he must dispose of them, if no manner is specified in the conditions, as quickly and safely as practicable⁹.

As from a day to be appointed¹⁰, there is implied in every consent for the importation¹¹ or acquisition¹² of genetically modified organisms a general condition¹³ that the holder of the consent will:

- 1973 (a) take all reasonable steps to keep himself informed (by reference to the nature of the organisms and the manner in which he intends to keep them after their importation or acquisition) of any risks there are of damage to the environment¹⁴ being caused as a result of their importation or acquisition¹⁵; and
- 1974 (b) if at any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Secretary of State forthwith¹⁶.

As from a day to be appointed¹⁷, there is implied in every consent for keeping genetically modified organisms a general condition¹⁸ that the holder of the consent will:

- 1975 (i) take all reasonable steps to keep himself informed of any damage to the environment which may have been caused as a result of his keeping the organisms and of any risks there are of such damage being caused as a result of his continuing to keep them¹⁹;
- 1976 (ii) if at any time it appears that any such risks are more serious than were apparent when the consent was granted, notify the Secretary of State forthwith²⁰; and
- 1977 (iii) use the best available techniques not entailing excessive cost for keeping the organisms under his control²¹ and for preventing any damage to the environment being caused as a result of his continuing to keep them²².

There is implied in every consent for releasing or marketing genetically modified organisms a general condition²³ that the holder of the consent will:

- 1978 (A) take all reasonable steps to keep himself informed (by reference to the nature of the organisms and the extent and manner of the release or marketing) of

- any risks there are of damage to the environment being caused as a result of their being released or, as the case may be, marketed²⁴;
- 1979 (B) notify the Secretary of State²⁵ forthwith of:
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152. (aa) any new information which becomes available with regard to any risks there are of damage to the environment being so caused²⁶; and
153. (bb) any unforeseen event, occurring in connection with a release by him, which might affect the risks there are of damage to the environment being caused as a result of their being released²⁷;
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- 1980 (C) take such measures as are necessary to prevent damage to the environment being caused as a result of the release or, as the case may be, the marketing of the organisms²⁸;
- 1981 (D) notify the Secretary of State of the measures, if any, taken as a result of new information becoming available or an unforeseen event occurring as described in head (bb) above²⁹; and
- 1982 (E) in a case where new information becomes available or an unforeseen event so occurs, revise the information contained in his application for a consent accordingly and supply the revised information to the Secretary of State³⁰.

There is implied in every consent for keeping, releasing or marketing genetically modified organisms of any description a general condition³¹ that the holder of the consent³² will take all reasonable steps to keep himself informed of developments in the techniques which may be available in his case for preventing damage to the environment being caused as a result of the doing of the act authorised by the consent in relation to organisms of that description³³; and if it appears at any time that any better techniques are available to him than is required by any condition included in the consent³⁴, he must notify the Secretary of State of that fact forthwith³⁵.

Where an entry is required by a condition in a consent to be made in any record as to the observance of any other condition and the entry has not been made, that fact is admissible as evidence that that other condition has not been observed³⁶.

1 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to consents generally see PARA 797.

3 Environmental Protection Act 1990 s 112(1) (amended by SI 1992/2617; SI 2002/2443; and SI 2002/3188). As to the meaning of 'damage to the environment' see PARA 793 note 2.

4 Environmental Protection Act 1990 s 112(2)(a).

5 As to the meaning of 'release' see PARA 793 note 3.

6 As to when genetically modified organisms are marketed see PARA 794 note 4.

7 As to the meanings of 'organisms' and 'genetically modified organisms' see PARA 793.

8 Environmental Protection Act 1990 s 112(2)(b).

9 Environmental Protection Act 1990 s 112(2).

10 At the date at which this volume states the law no order had been made bringing the Environmental Protection Act 1990 s 112(3), (4) into force.

11 As to the meaning of 'import' see PARA 793 note 1.

12 As to the meaning of 'acquire' see PARA 794 note 2.

- 13 Environmental Protection Act 1990 s 112(3). See note 10. This is expressed to be subject to s 112(6). The general condition implied into a consent under s 112(3), (4) or (5) has effect subject to any conditions imposed under s 112(1) (see the text and note 3); and the obligations imposed by virtue of head (iii) or head (c) in the text will not apply to any aspect of an act authorised by a consent which is regulated by such a condition: s 112(6).
- 14 As to the meanings of 'environment' and 'damage to the environment' see PARA 793 note 2.
- 15 Environmental Protection Act 1990 s 112(3)(a). See note 10.
- 16 Environmental Protection Act 1990 s 112(3)(b). See note 10.
- 17 See note 10.
- 18 Environmental Protection Act 1990 s 112(4). See note 10. This is expressed to be subject to s 112(6): see note 13.
- 19 Environmental Protection Act 1990 s 112(4)(a). See note 10.
- 20 Environmental Protection Act 1990 s 112(4)(b). See note 10.
- 21 As to the meaning of 'control' see PARA 793 note 3.
- 22 Environmental Protection Act 1990 s 112(4)(c). See note 10.
- 23 Environmental Protection Act 1990 s 112(5). This is expressed to be subject to s 112(6) (see note 13).
- 24 Environmental Protection Act 1990 s 112(5)(a).
- 25 Environmental Protection Act 1990 s 112(5)(b) (amended by SI 2002/2443; and SI 2002/3188).
- 26 Environmental Protection Act 1990 s 112(5)(b)(i) (s 112(5)(b) substituted by SI 1992/3280).
- 27 Environmental Protection Act 1990 s 112(5)(b)(iii) (added by SI 2002/2443; and SI 2002/3188).
- 28 Environmental Protection Act 1990 s 112(5)(c) (substituted by SI 2002/2443; and SI 2002/3188).
- 29 Environmental Protection Act 1990 s 112(5)(d) (s 125(5)(d), (e) added by SI 2002/2443; and SI 2002/3188).
- 30 Environmental Protection Act 1990 s 112(5)(e) (as added: see note 29).
- 31 This general condition has effect subject to any conditions imposed under the Environmental Protection Act 1990 s 112(1) (see the text and note 3): see s 112(7).
- 32 Environmental Protection Act 1990 s 112(7).
- 33 Environmental Protection Act 1990 s 112(7)(a).
- 34 Ie under the Environmental Protection Act 1990 s 112(1): see the text and note 3.
- 35 Environmental Protection Act 1990 s 112(7)(b).
- 36 Environmental Protection Act 1990 s 119(2).

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799. Fees and charges.

The Secretary of State¹ may, with the approval of the Treasury², make and from time to time revise a scheme prescribing:

- 1983 (1) fees payable in respect of applications for consents³; and
- 1984 (2) charges payable by persons holding consents in respect of the subsistence of their consents⁴.

It is a condition of any such consent that any applicable prescribed charge is paid in accordance with that scheme⁵. Such a scheme may, in particular:

- 1985 (a) provide for different fees or charges to be payable in different cases or circumstances⁶;
- 1986 (b) provide for the times at which and the manner in which payments are to be made⁷; and
- 1987 (c) make such incidental, supplementary and transitional provision as appears to the Secretary of State to be appropriate⁸.

The Secretary of State must so frame a scheme as to secure, so far as practicable, that the amounts payable under it will be sufficient, taking one financial year with another, to cover the expenditure of the Secretary of State in discharging his statutory functions⁹ in relation to consents¹⁰. On making or revising such a scheme, the Secretary of State must lay a copy of the scheme or of the scheme as revised before each House of Parliament¹¹.

1 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

3 Environmental Protection Act 1990 s 113(1)(a). As to consents generally see PARA 797.

4 Environmental Protection Act 1990 s 113(1)(b).

5 Environmental Protection Act 1990 s 113(1).

6 Environmental Protection Act 1990 s 113(2)(a).

7 Environmental Protection Act 1990 s 113(2)(b).

8 Environmental Protection Act 1990 s 113(2)(c).

9 I.e. his functions under the Environmental Protection Act 1990 Pt VI (ss 106-127).

10 Environmental Protection Act 1990 s 113(3).

11 Environmental Protection Act 1990 s 113(4).

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(iii) Enforcement

A. INSPECTORS

800. Appointment etc of inspectors.

The Secretary of State¹ may appoint as inspectors, for carrying the statutory provisions² into effect, such number of persons appearing to him to be qualified for the purpose as he may consider necessary³. The Secretary of State may make to or in respect of any person so appointed such payments by way of remuneration, allowances or otherwise as he may with the approval of the Treasury⁴ determine⁵. An inspector is not personally liable in any civil or criminal proceedings for anything done in the purported exercise of any power relating to rights of entry and inspection, or power to deal with causes of imminent danger of damage to the environment⁶ if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it⁷. In England and Wales an inspector, if authorised to do so by the Secretary of State, may prosecute before a magistrates' court proceedings for an offence⁸.

It is an offence falsely to pretend to be an inspector⁹.

1 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 I.e the provisions of the Environmental Protection Act 1990 Pt VI (ss 106-127).

3 Environmental Protection Act 1990 s 114(1). In Pt VI, 'inspector' means, subject to s 125, a person appointed as an inspector under s 114(1): s 114(5). In ss 115, 117 (see PARAS 801, 803), 'inspector' includes, to the extent of the delegation, any inspector appointed by an authority to whom functions are delegated by the Secretary of State: s 125(2). As to the delegation of functions see PARA 812.

4 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

5 Environmental Protection Act 1990 s 114(2).

6 I.e any power under the Environmental Protection Act 1990 s 115 or s 117: see PARAS 801, 803. As to the meanings of 'environment' and 'damage to the environment' see PARA 793 note 2.

7 Environmental Protection Act 1990 s 114(3).

8 Environmental Protection Act 1990 s 114(4) (amended by the Legal Services Act 2007 Sch 21 para 102, Sch 23). The offence referred to in the text is an offence under s 118(1): see PARA 804.

9 See the Environmental Protection Act 1990 s 118; and PARA 804.

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B. ENFORCEMENT POWERS

801. Rights of entry and inspection.

An inspector¹ may, on production (if so required) of his authority, exercise any of the powers mentioned below² for the purposes of the discharge of the functions of the Secretary of State³ under the relevant statutory provisions⁴. Those powers are exercisable:

- 1988 (1) in relation to premises⁵: (a) on which the inspector has reason to believe a person is keeping or has kept any genetically modified organisms⁶; or (b) from which he has reason to believe any such organisms have been released⁷ or have escaped⁸; and
- 1989 (2) in relation to premises on which the inspector has reason to believe there may be harmful⁹ genetically modified organisms or evidence of damage to the environment¹⁰ caused by genetically modified organisms¹¹.

The powers are not, however, exercisable in relation to premises used wholly or mainly for domestic purposes¹².

The powers of an inspector are:

- 1990 (i) at any reasonable time (or, in a situation in which in his opinion there is an immediate risk of damage to the environment, at any time)¹³:

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- 154. (A) to enter premises which he has reason to believe it is necessary for him to enter and to take with him any person duly authorised by the Secretary of State and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable¹⁴; and
- 155. (B) to take with him any equipment or materials required for any purpose for which the power of entry is being exercised¹⁵;

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- 1991 (ii) to carry out such tests and inspections (and to make such recordings) as may in any circumstances be necessary¹⁶;
- 1992 (iii) to direct that any, or any part of, premises which he has power to enter, or anything in or on such premises, is to be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any test or inspection¹⁷;
- 1993 (iv) to take samples of any organisms, articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of the premises¹⁸;
- 1994 (v) in the case of anything found in or on any premises which he has power to enter, which appears to him to contain or to have contained genetically modified organisms which have caused or are likely to cause damage to the environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary)¹⁹;

1995 (vi) in the case of anything mentioned in head (v) above or anything found on premises which he has power to enter which appears to be a genetically modified organism or to consist of or include genetically modified organisms, to take possession of it and detain it for so long as is necessary for all or any of the following purposes²⁰, namely:

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156. (A) to examine it and do to it anything which he has power to do under head (v) above²¹;

157. (B) to ensure that it is not tampered with before his examination of it is completed²²; and

158. (C) to ensure that it is available for use as evidence in any proceedings for an offence²³;

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1996 (vii) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any test or inspection under these provisions to answer (in the absence of persons other than a person nominated to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers²⁴;

1997 (viii) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which are required to be kept²⁵ or it is necessary for him to see for the purposes of any test or inspection under these provisions and to inspect, and take copies of, or of any entry in, the records²⁶;

1998 (ix) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him²⁷;

1999 (x) any other power²⁸ which is conferred by regulations made by the Secretary of State²⁹.

The powers conferred by heads (i) to (v) and head (viii) above are also exercisable³⁰ by any person authorised for the purpose in writing by the Secretary of State³¹.

Nothing in the above provisions may be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure in a claim in the High Court³².

It is an offence to fail to comply with any requirement imposed by these provisions, to prevent any person from answering any question put by an inspector, to obstruct an inspector, to make false or misleading statements or entries or to forge any document, or falsely to pretend to be an inspector³³.

1 As to the meaning of 'inspector' see PARA 800 note 3.

2 I.e. the powers specified in the Environmental Protection Act 1990 s 115(3): see heads (i)-(x) in the text.

3 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Environmental Protection Act 1990 s 115(1). The relevant statutory provisions are those of Pt VI (ss 106-127).

5 In the Environmental Protection Act 1990 Pt VI, 'premises' includes any land: s 127(1).

6 Environmental Protection Act 1990 s 115(2)(a)(i). As to the meanings of 'organisms' and 'genetically modified organisms' see PARA 793.

- 7 As to the meaning of 'release' see PARA 793 note 3.
- 8 Environmental Protection Act 1990 s 115(2)(a)(ii). As to the meaning of 'escape' see PARA 793 note 3.
- 9 As to the meaning of 'harmful' see PARA 793 note 8.
- 10 As to the meanings of 'environment' and 'damage to the environment' see PARA 793 note 2.
- 11 Environmental Protection Act 1990 s 115(2)(b).
- 12 Environmental Protection Act 1990 s 115(2).
- 13 Environmental Protection Act 1990 s 115(3)(a).
- 14 Environmental Protection Act 1990 s 115(3)(a)(i).
- 15 Environmental Protection Act 1990 s 115(3)(a)(ii).
- 16 Environmental Protection Act 1990 s 115(3)(b).
- 17 Environmental Protection Act 1990 s 115(3)(c).
- 18 Environmental Protection Act 1990 s 115(3)(d). The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under head (iv) in the text: s 115(4). At the date at which this volume states the law no regulations had been made under this provision. As to the duty to consult the Food Standards Agency before regulations are made under these provisions see PARA 812 note 5. As to the Food Standards Agency generally see **FOOD** vol 18(2) (Reissue) PARA 225 et seq.
- 19 Environmental Protection Act 1990 s 115(3)(e). Where an inspector proposes to exercise the power conferred by head (v) in the text, he must, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person: s 115(5). Before exercising the power, an inspector must consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power: s 115(6).
- 20 Environmental Protection Act 1990 s 115(3)(f).
- 21 Environmental Protection Act 1990 s 115(3)(f)(i).
- 22 Environmental Protection Act 1990 s 115(3)(f)(ii).
- 23 Environmental Protection Act 1990 s 115(3)(f)(iii). As to offences see s 118; and PARA 804. Where, under the power conferred by head (vi) in the text, an inspector takes possession of anything found on any premises, he must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars sufficient to identify what he has seized and stating that he has taken possession of it under that power: s 115(7). Before taking possession under that power of:
- 151 (1) any thing that forms part of a batch of similar things; or
- 152 (2) any substance,
- an inspector must, if it is practical and safe for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it: s 115(7).
- 24 No answer given by a person in pursuance of a requirement imposed under head (vii) in the text is admissible in evidence in any proceedings in England and Wales against that person: Environmental Protection Act 1990 s 115(8).
- 25 It required to be kept under the Environmental Protection Act 1990 Pt VI. As to records see PARA 794.
- 26 Environmental Protection Act 1990 s 115(3)(h).
- 27 Environmental Protection Act 1990 s 115(3)(i). The reference in the text is a reference to powers conferred by s 115.
- 28 It for the purpose mentioned in the Environmental Protection Act 1990 s 115(1): see the text and note 4.

29 Environmental Protection Act 1990 s 115(3)(j). At the date at which this volume states the law no such regulations had been made.

30 le subject to the Environmental Protection Act 1990 s 115(4)-(6): see notes 18, 19.

31 Environmental Protection Act 1990 s 115(9).

32 Environmental Protection Act 1990 s 115(10). As to disclosure of documents generally see CPR Pt 31; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 538 et seq, 963 et seq.

33 See the Environmental Protection Act 1990 s 118; and PARA 804.

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802. Obtaining of information from persons.

For the purposes of the discharge of his statutory functions in relation to genetically modified organisms¹, the Secretary of State² may, by notice in writing served on any person who appears to him:

- 2000 (1) to be involved in the importation³, acquisition⁴, keeping⁵, release⁶ or marketing⁷ of genetically modified organisms⁸; or
- 2001 (2) to be about to become, or to have been, involved in any of those activities⁹,

require that person to furnish such relevant information¹⁰ available to him as is specified in the notice, in such form and within such period following service of the notice as is so specified¹¹.

It is an offence to fail to comply with a notice under these provisions, or to make a false or misleading statement in purported compliance with such a notice¹².

1 The functions under the Environmental Protection Act 1990 Pt VI (ss 106-127). As to the meanings of 'organisms' and 'genetically modified organisms' see PARA 793.

2 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the meaning of 'import' see PARA 793 note 1.

4 As to the meaning of 'acquire' see PARA 794 note 2.

5 At the date at which this volume states the law, the Environmental Protection Act 1990 s 116 had not been brought into force in relation to the keeping of genetically modified organisms (ie it has only been brought into force in regard to the import, acquisition, keeping, release or marketing of such organisms: see s 116(1)(a)).

6 As to the meaning of 'release' see PARA 793 note 3.

7 As to when genetically modified organisms are marketed see PARA 794 note 4.

8 Environmental Protection Act 1990 s 116(1)(a). See note 5.

9 Environmental Protection Act 1990 s 116(1)(b). See note 5.

10 For these purposes, 'relevant information' means information concerning any aspects of the activities in question, including any damage to the environment which may be or have been caused thereby; and the discharge by the Secretary of State of an obligation of the United Kingdom under the Community treaties or any international agreement concerning the protection of the environment from harm caused by genetically modified organisms must be treated as a function of his under the Environmental Protection Act 1990 Pt VI: s 116(2). See note 5. As to the meanings of 'environment' and 'damage to the environment' see PARA 793 note 2. As to the meaning of 'harm' see PARA 793 note 8. As to the meaning of 'United Kingdom' see PARA 1 note 2.

11 Environmental Protection Act 1990 s 116(1). See note 5.

12 See the Environmental Protection Act 1990 s 118; and PARA 804.

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803. Power to deal with cause of imminent danger of damage to the environment.

Where, in the case of anything found by him on any premises¹ which he has power to enter, an inspector² has reason to believe that it is a genetically modified organism³ or that it consists of or includes genetically modified organisms and that, in the circumstances in which he finds it, it is a cause of imminent danger of damage to the environment⁴, he may seize it and cause it to be rendered harmless⁵ (whether by destruction, by bringing it under proper control⁶ or otherwise)⁷. Before:

- 2002 (1) any thing that forms part of a batch of similar things; or
- 2003 (2) any substance,

is rendered harmless under these provisions, the inspector must, if it is practicable and safe for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it⁸. As soon as may be after anything has been seized and rendered harmless, the inspector must prepare and sign a written report giving particulars of the circumstances in which it was seized and so dealt with by him⁹, and must:

- 2004 (a) give a signed copy of the report to a responsible person at the premises where it was found by him¹⁰; and
- 2005 (b) unless that person is the owner of it, also serve a signed copy of the report on the owner¹¹.

If, where head (b) above applies, the inspector cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under head (a) above¹².

It is an offence to obstruct an inspector, or falsely to pretend to be an inspector¹³.

1 As to the meaning of 'premises' see PARA 801 note 5.

2 As to the meaning of 'inspector' see PARA 800 note 3.

3 As to the meanings of 'organisms' and 'genetically modified organisms' see PARA 793.

4 As to the meanings of 'environment' and 'damage to the environment' see PARA 793 note 2.

5 As to the meaning of 'harmless' see PARA 793 note 8.

6 As to the meaning of 'control' see PARA 793 note 3.

7 Environmental Protection Act 1990 s 117(1).

8 Environmental Protection Act 1990 s 117(2).

9 Environmental Protection Act 1990 s 117(3)(a).

- 10 Environmental Protection Act 1990 s 117(3)(b).
- 11 Environmental Protection Act 1990 s 117(3)(c).
- 12 Environmental Protection Act 1990 s 117(3).
- 13 See the Environmental Protection Act 1990 s 118; and PARA 804.

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C. OFFENCES AND REMEDIES FOR HARM

804. Offences.

It is an offence for a person:

- 2006 (1) to do anything in contravention of risk assessment and notification requirements for importation, acquisition, release or marketing¹ in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism²;
- 2007 (2) to fail to comply with risk assessment and notification requirements for the keeping of organisms³ when keeping something which is, and which he knows or has reason to believe is, a genetically modified organism⁴;
- 2008 (3) to do anything in contravention of the requirements to have a consent⁵ in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism⁶;
- 2009 (4) to fail to comply with specified requirements as to the importation, acquisition, keeping, release or marketing of genetically modified organisms⁷ in relation to something which is, and which he knows or has reason to believe is, a genetically modified organism⁸;
- 2010 (5) to fail, without reasonable excuse, to comply with the requirement: (a) to record the results of risk assessments, or to provide further information to the Secretary of State; or (b) prior to a decision on an application for a consent, to provide further information to the Secretary of State as to risk of damage to the environment⁹;
- 2011 (6) to contravene any prohibition imposed on him by a prohibition notice¹⁰;
- 2012 (7) without reasonable excuse, to fail to comply with any requirement relating to the rights of entry and inspection¹¹;
- 2013 (8) to prevent any other person from appearing before an inspector¹² or from answering any question to which an inspector may¹³ require an answer¹⁴;
- 2014 (9) intentionally to obstruct an inspector in the exercise or performance of his powers or duties, other than the powers or duties in relation to imminent danger of damage to the environment¹⁵;
- 2015 (10) intentionally to obstruct an inspector in the exercise of his powers or duties in relation to imminent danger of damage to the environment¹⁶;
- 2016 (11) to fail, without reasonable excuse, to comply with any requirement imposed by a notice to furnish information¹⁷;
- 2017 (12) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made: (a) in purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions¹⁸; or (b) for the purpose of obtaining the grant of a consent¹⁹ to himself or any other person or the variation of a consent²⁰;
- 2018 (13) intentionally to make a false entry in any record required to be kept²¹;
- 2019 (14) with intent to deceive, to forge or use a document purporting to be issued or required for any purpose relating to consents²², or to make or have in his

possession a document so closely resembling any such document as to be likely to deceive²³;
2020 (15) falsely to pretend to be an inspector²⁴.

It is a defence for a person charged with an offence under head (1), (2), (3), (4) or (6) above to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence²⁵.

Proceedings in respect of an offence under the above provisions may not be instituted in England and Wales except by the Secretary of State or with the consent of the Director of Public Prosecutions²⁶.

1 Ie the Environmental Protection Act 1990 s 108(1): see PARA 794.

2 Environmental Protection Act 1990 s 118(1)(a). As to the meanings of 'organisms' and 'genetically modified organisms' see PARA 793. As to the power of the court to order the cause of an offence under this provision to be remedied see PARA 805. As to the power of the Secretary of State to remedy harm where an offence has been committed under this provision see PARA 806. As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

A person guilty of an offence under head (1) or head (2) in the text is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; and on conviction on indictment to a fine or to imprisonment for a term not exceeding five years, or to both: s 118(5). Where a person is convicted of an offence under head (2) in the text in respect of his keeping any genetically modified organism, then, if the contravention in respect of which he was convicted is continued after he was convicted he is guilty of a further offence and liable on summary conviction to a fine of one-fifth of level 5 on the standard scale for each day on which the contravention is so continued: s 118(9). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

3 Ie the Environmental Protection Act 1990 s 108(3): see PARA 794.

4 Environmental Protection Act 1990 s 118(1)(b). At the date at which this volume states the law no order had been made bringing s 118(1)(b) into force. As to the power of the court to order the cause of an offence under this provision to be remedied see PARA 805. As to the power of the Secretary of State to remedy harm where an offence has been committed under this provision see PARA 806.

As to the penalty for an offence under this provision see note 2.

5 Ie the Environmental Protection Act 1990 s 111(1) or (2): see PARA 797.

6 Environmental Protection Act 1990 s 118(1)(c). As to the power of the court to order the cause of an offence under this provision to be remedied see PARA 805. As to the power of the Secretary of State to remedy harm where an offence has been committed under this provision see PARA 806.

In proceedings for such an offence consisting in a failure to comply with the general condition implied by s 112(4)(c) or s 112(5)(c) (see PARA 798), it is for the accused to prove the matters described in s 119(1A): s 119(1) (s 119(1) amended, and s 119(1A) added, by SI 2002/2443; and SI 2002/3188). Those matters are: (1) in the case of an offence under the Environmental Protection Act 1990 s 118(1)(c) consisting in a failure to comply with the general condition implied by s 112(5)(c) (see PARA 798): (a) that no measures, other than the measures taken by him, were necessary to prevent damage being caused to the environment from the release or, as the case may be, marketing of the organisms; or (b) in a case where he took no measures, that no measures were necessary; and (2) in any other case, that there was no better available technique not entailing excessive cost than was in fact used to satisfy the condition or to comply with s 112: s 119(1A) (as so added).

A person guilty of an offence under head (3) or (4) in the text is liable on summary conviction to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both; and on conviction on indictment to a fine or to imprisonment for a term not exceeding five years, or to both: s 118(3).

7 Ie any requirement of the Environmental Protection Act 1990 s 109(2), (3)(a), (b), (c) or (4): see PARA 795.

8 Environmental Protection Act 1990 s 118(1)(d). At the date at which this volume states the law no order had been made bringing s 118(1)(d) into force. As to the power of the court to order the cause of an offence under this provision to be remedied see PARA 805. As to the power of the Secretary of State to remedy harm where an offence has been committed under this provision see PARA 806.

In proceedings for an offence under s 118(1)(d) consisting in a failure to comply with s 109(3)(c) or s 109(4)(c) (see PARA 795), it is for the accused to prove the matters described in s 119(1A) (see note 6): see s 119(1) (as amended: see note 6).

As to the penalty for an offence under this provision see note 6.

9 Environmental Protection Act 1990 s 118(1)(e) (amended by SI 1992/3280). The requirements referred to are those of the Environmental Protection Act 1990 ss 108(5), (6), 111(6A): see PARAS 794, 797. As to the power of the court to order the cause of an offence under this provision to be remedied see PARA 805. As to the power of the Secretary of State to remedy harm where an offence has been committed under this provision see PARA 806.

A person guilty of an offence under head (5), (10), (11), (12), (13) or (14) in the text is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; and on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both: s 118(6).

10 Environmental Protection Act 1990 s 118(1)(f). As to prohibition notices see PARA 796. As to the power of the court to order the cause of an offence under this provision to be remedied see PARA 805. As to the power of the Secretary of State to remedy harm where an offence has been committed under this provision see PARA 806.

A person guilty of an offence under head (6) in the text is liable on summary conviction to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both; and on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both: s 118(4).

11 Environmental Protection Act 1990 s 118(1)(g). As to those requirements see s 115; and PARA 801.

A person guilty of an offence under head (7), (8) or (9) in the text is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both: s 118(7). As from a day to be appointed, s 118(7) is amended so as to remove the reference to imprisonment: s 118(7) (prospectively amended by the Criminal Justice Act 2003 Sch 37 Pt 9). At the date at which this volume states the law no such day had been appointed.

12 As to the meaning of 'inspector' see PARA 800 note 3.

13 Ie by virtue of the Environmental Protection Act 1990 s 115(3): see PARA 801.

14 Environmental Protection Act 1990 s 118(1)(h). As to the penalty for an offence under this provision see note 11.

15 Environmental Protection Act 1990 s 118(1)(i). The powers and duties referred to are those other than under s 117: see PARA 803. As to the penalty for an offence under this provision see note 11.

16 Environmental Protection Act 1990 s 118(1)(j). The powers and duties referred to are those under s 117: see PARA 803. As to the penalty for an offence under this provision see note 9.

17 Environmental Protection Act 1990 s 118(1)(k). The notice referred to is a notice under s 116: see PARA 802. As to the penalty for an offence under this provision see note 9.

18 Ie the provisions of the Environmental Protection Act 1990 Pt VI (ss 106-127).

19 As to consents see PARAS 797-798.

20 Environmental Protection Act 1990 s 118(1)(l). As to the penalty for an offence under this provision see note 9.

21 Environmental Protection Act 1990 s 118(1)(m). Records are required to be kept under ss 108, 111: see PARAS 794, 797. At the date at which this volume states the law no order had been made bringing s 118(1)(m) into force in relation to records under s 108.

As to the penalty for an offence under this provision see note 9.

22 Ie issued under or required for any purpose under the Environmental Protection Act 1990 s 111: see PARA 797.

23 Environmental Protection Act 1990 s 118(1)(n). As to the penalty for an offence under this provision see note 9.

24 Environmental Protection Act 1990 s 118(1)(o). A person guilty of an offence under head (15) in the text is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 118(8).

25 Environmental Protection Act 1990 s 118(2).

26 Environmental Protection Act 1990 s 118(10). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

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805. Power of court to order cause of offence to be remedied.

Where a person is convicted of a specified offence¹ in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order², to take such steps as may be specified in the order for remedying those matters³.

Where a person is so ordered to remedy any matters, that person is not liable for an offence in respect of those matters, in so far as they continue during the time fixed by the order or any further time allowed⁴.

1 Ie an offence under the Environmental Protection Act 1990 s 118(1)(a)-(f): see PARA 804 heads (1)-(6).

2 The time fixed by such an order may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this provision, as the case may be: Environmental Protection Act 1990 s 120(2).

3 Environmental Protection Act 1990 s 120(1).

4 Environmental Protection Act 1990 s 120(3).

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806. Power of Secretary of State to remedy harm.

Where the commission of a specified offence¹ causes any harm² which it is possible to remedy, the Secretary of State³ may arrange for any reasonable steps to be taken towards remedying the harm, and recover the cost of taking those steps from any person convicted of that offence⁴. However, the Secretary of State may not exercise these powers where any of the steps are to be taken on, or will affect, land in the occupation of any person other than a person convicted of the offence in question, except with the permission of that person⁵.

1 le an offence under the Environmental Protection Act 1990 s 118(1)(a)-(f): see PARA 804 heads (1)-(6).

2 As to the meaning of 'harm' see PARA 793 note 8.

3 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Environmental Protection Act 1990 s 121(1).

5 Environmental Protection Act 1990 s 121(2).

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(iv) The Public Register

A. THE REGISTER

807. Public register of information.

The Secretary of State¹ must² maintain a register containing prescribed³ particulars of or relating to:

- 2021 (1) notices given or other information furnished in relation to risk assessment and notification requirements⁴;
- 2022 (2) directions given requiring persons to apply for consents⁵;
- 2023 (3) prohibition notices⁶;
- 2024 (4) applications for consents (and any further information furnished in connection with them) and any advice given by the advisory committee⁷ in relation to such applications⁸;
- 2025 (5) consents granted by the Secretary of State and any information furnished to him in pursuance of consent conditions⁹;
- 2026 (6) any other information obtained or furnished under any relevant statutory provision¹⁰;
- 2027 (7) convictions for such offences¹¹ as may be prescribed¹²;
- 2028 (8) such other matters relating to the relevant statutory provisions as may be prescribed¹³.

It is the duty of the Secretary of State to secure that the register is open to inspection by members of the public free of charge at all reasonable hours¹⁴, and to afford to members of the public facilities for obtaining, on payment of reasonable charges, copies of entries¹⁵.

The register may be kept in any form¹⁶.

1 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 This duty is subject to the exclusion from the register of certain information under the Environmental Protection Act 1990 s 123 (see PARAS 808-810): s 122(1).

3 For the purposes of the Environmental Protection Act 1990 s 122, 'prescribed' means prescribed in regulations made by the Secretary of State; and the Secretary of State may make regulations with respect to the keeping of the register: s 122(4). See the Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, regs 34-36; and the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, regs 35-37. As to the duty to consult the Food Standards Agency before regulations are made under these provisions see PARA 812 note 5. As to the Food Standards Agency generally see **FOOD** vol 18(2) (Reissue) PARA 225 et seq.

4 Environmental Protection Act 1990 s 122(1)(a). As to such notices and information see s 108; and PARA 794. At the date at which this volume states the law no order had been made bringing s 122(1)(a), (b) into force.

- 5 Environmental Protection Act 1990 s 122(1)(b). See note 4. As to such directions see s 108(8); and PARA 794. As to consents see PARAS 797-798.
- 6 Environmental Protection Act 1990 s 122(1)(c). As to prohibition notices see PARA 796.
- 7 le the committee appointed under the Environmental Protection Act 1990 s 124: see PARA 811.
- 8 Environmental Protection Act 1990 s 122(1)(d).
- 9 Environmental Protection Act 1990 s 122(1)(e).
- 10 Environmental Protection Act 1990 s 122(1)(f). The relevant statutory provisions are those of Pt VI (ss 106-127).
- 11 le offences under the Environmental Protection Act 1990 s 118: see PARA 804.
- 12 Environmental Protection Act 1990 s 122(1)(g). See also the regulations mentioned in note 3.
- 13 Environmental Protection Act 1990 s 122(1)(h). At the date at which this volume states the law no regulations have been made under s 122(1)(h). See note 2.
- 14 Environmental Protection Act 1990 s 122(2)(a).
- 15 Environmental Protection Act 1990 s 122(2)(b).
- 16 Environmental Protection Act 1990 s 122(3).

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B. EXCLUSION OF INFORMATION FROM THE REGISTER

808. National security.

No information may be included in the register¹ if and so long as, in the opinion of the Secretary of State², the inclusion of the information would be contrary to the interests of national security³.

1 le the register held under the Environmental Protection Act 1990 s 122: see PARA 807.

2 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Environmental Protection Act 1990 s 123(1).

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809. Damage to the environment.

No information may be included in the register¹ if and so long as, in the opinion of the Secretary of State², it ought to be excluded on the ground that its inclusion might result in damage to the environment³.

1 Ie the register held under the Environmental Protection Act 1990 s 122: see PARA 807.

2 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Environmental Protection Act 1990 s 123(2). As to the meanings of 'environment' and 'damage to the environment' see PARA 793 note 2.

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810. Commercially confidential information.

No information relating to the affairs of any individual or business may be included in the register¹ without the consent of that individual or the person for the time being carrying on that business, if the Secretary of State² has determined that the information:

- 2029 (1) is, in relation to him, commercially confidential; and
- 2030 (2) is not information of a specified description³,

unless the Secretary of State is of the opinion that the information is no longer commercially confidential in relation to him⁴. The Secretary of State is not required to determine whether any information is or is not commercially confidential except where the person furnishing the information applies to have it excluded on the ground that it is (in relation to himself or another person) commercially confidential⁵. Where such an application has been made the Secretary of State must make a determination and inform the applicant of it as soon as is practicable⁶.

Where it appears to the Secretary of State that any information (other than information furnished by the person to whom it relates) which has been obtained under or by virtue of any relevant statutory provision⁷ might be commercially confidential⁸, the Secretary of State must:

- 2031 (a) give to the person to whom or to whose business it relates notice that the information is required to be included in the register unless excluded⁹ as being commercially confidential¹⁰; and
- 2032 (b) give him a reasonable opportunity of objecting to the inclusion of the information on the ground that it is commercially confidential, and of making representations to the Secretary of State for the purpose of justifying any such objection¹¹.

The Secretary of State must take any representations into account before determining whether the information is or is not commercially confidential¹².

Information excluded from the register by reason of commercial confidentiality is treated as ceasing to be commercially confidential at the expiry of a period of four years¹³ beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it or to whom or to whose business it relates may apply to the Secretary of State for the information to remain excluded on the ground that it is still commercially confidential¹⁴.

1 Ie the register held under the Environmental Protection Act 1990 s 122: see PARA 807.

2 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA.

3 Ie information to which the Environmental Protection Act 1990 s 123(7) applies. The prescribed particulars of or relating to the matters mentioned in s 122(1)(a), (c), (d), (e) (see PARA 807) must be included in the register notwithstanding that they may be commercially confidential if and so far as they are of any of the following descriptions: s 123(7) (amended by SI 2002/2443; and SI 2002/3188). Those descriptions are: (1) the name and address of the person giving the notice or furnishing the information; (2) the general description of

any genetically modified organisms to which the notice or other information relates; (3) the purpose for which those organisms are being imported, acquired, kept, released or marketed (according to whichever of those acts the notice or other information relates); and (4) notices under the Environmental Protection Act 1990 s 112(3), (4), (5) or (7) (see PARA 798): s 123(7)(a)-(f) (amended by SI 2002/2443; and SI 2002/3188). The Secretary of State may by regulations prescribe any other description of information as information which the public interest requires to be included in the register notwithstanding that it may be commercially confidential: Environmental Protection Act 1990 s 123(7) (as so amended). For the purposes of s 123(7), the following descriptions of information are also information which must be included in the register even if commercially confidential: (a) the location of the release of the genetically modified organisms to which the information relates; (b) the intended use of the genetically modified organisms to which the information relates; (c) the environmental risk assessment; (d) the methods and plans for monitoring and for responding to an emergency in relation to the genetically modified organisms to which the information relates; and (e) the name and address of the holder of a consent to which a prohibition notice or other information relates: Genetically Modified Organisms (Deliberate Release) Regulations 2002, SI 2002/2443, reg 33(1); Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002, SI 2002/3188, reg 34(1).

As to the duty to consult the Food Standards Agency before regulations are made under these provisions see PARA 812 note 5. As to the Food Standards Agency generally see **FOOD** vol 18(2) (Reissue) PARA 225 et seq.

As to the meanings of 'genetically modified organisms' and 'organisms' see PARA 793. As to the meaning of 'import' see PARA 793 note 1. As to the meaning of 'acquire' see PARA 794 note 2. As to the meaning of 'released' see PARA 793 note 3. As to when genetically modified organisms are marketed see PARA 794 note 4.

- 4 Environmental Protection Act 1990 s 123(3).
- 5 Environmental Protection Act 1990 s 123(4).
- 6 Environmental Protection Act 1990 s 123(5).
- 7 Ie any provision of the Environmental Protection Act 1990 Pt VI (ss 106-127).
- 8 Environmental Protection Act 1990 s 123(6).
- 9 Ie excluded under the Environmental Protection Act 1990 s 123(3): see the text and note 4.
- 10 Environmental Protection Act 1990 s 123(6)(a).
- 11 Environmental Protection Act 1990 s 123(6)(b).
- 12 Environmental Protection Act 1990 s 123(6).
- 13 The Secretary of State may by order substitute for this period such other period as he considers appropriate: Environmental Protection Act 1990 s 123(9).
- 14 Environmental Protection Act 1990 s 123(8).

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(v) Advice to, and Functions of, the Secretary of State

811. Advisory committee in relation to genetically modified organisms.

The Secretary of State¹ must appoint a committee to provide him with advice:

- 2033 (1) on the exercise of his powers in relation to genetically modified organisms²;
- 2034 (2) on the exercise of any relevant statutory power to make regulations³,

and on such other matters concerning his statutory functions⁴ as he may from time to time direct⁵. The chairman and other members of the committee hold and vacate office in accordance with the terms of their appointment⁶. The Secretary of State must pay to the members of the committee such remuneration (if any) and such allowances as he may, with the consent of the Treasury⁷, determine⁸.

1 As to the Secretary of State see PARAS 58, 812. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 I.e. his powers under the Environmental Protection Act 1990 ss 111-113: see PARAS 797-799.

3 I.e. any power under the Environmental Protection Act 1990 Pt VI (ss 106-127).

4 I.e. his functions under the Environmental Protection Act 1990 Pt VI.

5 Environmental Protection Act 1990 s 124(1).

6 Environmental Protection Act 1990 s 124(2).

7 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

8 Environmental Protection Act 1990 s 124(3).

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812. Transfer and joint exercise of functions and delegation of enforcement functions.

The Secretary of State¹ has powers to make regulations² under the relevant statutory provisions³, which were formerly exercisable in certain circumstances by the Secretary of State acting jointly with the Minister of Agriculture, Fisheries and Food⁴. Any relevant functions are now exercised by the Secretary of State⁵. However, any function of the Secretary of State in relation to:

- 2035 (1) giving directions in relation to risk assessment and notification requirements⁶; and
- 2036 (2) prohibition notices⁷,

is exercisable, where the function is to be exercised in relation to a matter with which the Food Standards Agency is concerned, by the Secretary of State and the Agency acting jointly⁸. Accordingly, any reference in the relevant statutory provisions to the Secretary of State, in relation to any such function, must be treated as a reference to the Secretary of State and the Agency acting jointly⁹.

The Secretary of State may, by an agreement made with any public authority, delegate to that authority or to any officer appointed by an authority exercising functions on behalf of that authority any of his enforcement functions¹⁰, subject to such restrictions and conditions as may be specified in the agreement¹¹. The Secretary of State must, if and so far as such an agreement so provides, make payments to the authority to reimburse the authority the expenses incurred in the performance of functions so delegated; but no such agreement may be made without the approval of the Treasury¹².

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Ie other than the power conferred by the Environmental Protection Act 1990 s 113: see PARA 799.

3 Ie under the Environmental Protection Act 1990 Pt VI (ss 106-127).

4 See the Environmental Protection Act 1990 s 126(1), (8) (s 126 substituted by the Food Standards Act 1999 Sch 3 para 18). The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State: see PARA 58 note 1.

5 See the Environmental Protection Act 1990 s 126(2) (as substituted: see note 4). However, the Food Standards Agency must be consulted before any regulations are made under the Environmental Protection Act 1990 Pt VI, other than under s 113 (see PARA 799): s 126(5)(a), (8) (as so substituted). As to the Food Standards Agency generally see **FOOD** vol 18(2) (Reissue) PARA 225 et seq.

6 Ie under the Environmental Protection Act 1990 s 108(8): see PARA 794.

7 Ie under the Environmental Protection Act 1990 s 110: see PARA 796.

8 See the Environmental Protection Act 1990 s 126(3) (as substituted: see note 4).

9 See the Environmental Protection Act 1990 s 126(4) (as substituted: see note 4).

10 For these purposes, the 'enforcement functions' of the Secretary of State are his functions under the Environmental Protection Act 1990 s 110 (see PARA 796), s 114(1), (4) (see PARA 800), s 116 (see PARA 802), s 118(10) (see PARA 804), s 121 (see PARA 806): s 125(2).

11 Environmental Protection Act 1990 s 125(1).

12 Environmental Protection Act 1990 s 125(3). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

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GENETICALLY MODIFIED ORGANISMS/(3) ACTIVITIES INVOLVING GENETIC MODIFICATION/813.
Activities involving genetic modification.

(3) ACTIVITIES INVOLVING GENETIC MODIFICATION

813. Activities involving genetic modification.

The Genetically Modified Organisms (Contained Use) Regulations 2000¹ have effect with a view to: (1) protecting persons against risks to their health, whether immediate or delayed, arising from activities involving genetic modification² of organisms³; and (2) protecting the environment against harm from activities involving genetic modification of micro-organisms⁴.

The regulations⁵ do not apply to the genetic modification of organisms solely by any of certain specified techniques⁶ nor to any organisms so modified⁷. They also do not apply to:

- 2037 (a) any activity in which genetically modified organisms are cultured, stored, transported, destroyed, disposed of or used, where such organisms are or are contained: (i) in a product⁸ marketed in pursuance of certain consents⁹ and in each case, that activity is conducted in accordance with any conditions or limitations attached to the consent¹⁰; (ii) in a medicinal product for human or veterinary use marketed in accordance with certain European Union legislation¹¹; (iii) in food or feed authorised in accordance with the provisions of certain European Union legislation¹²; or (iv) in certain notified food or feed products¹³; or
- 2038 (b) any activity in which genetically modified organisms are released or marketed in cases or circumstances in which the consent of the Secretary of State or, as regards Wales, the Welsh Ministers, is required under the Environmental Protection Act 1990¹⁴.

Exemption may be granted from any or all of the above requirements and prohibitions in respect of any person or class of persons, or any organism or class of organisms¹⁵.

¹ ie the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831.

² 'Activity involving genetic modification' means a contained use; and 'contained use' means an activity in which organisms are genetically modified or in which genetically modified organisms are cultured, stored, transported, destroyed, disposed of or used in any other way and for which physical, chemical or biological barriers, or any combination of such barriers, are used to limit their contact with, and to provide a high level of protection for, humans and the environment: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1).

'Genetic modification' in relation to an organism means the altering of the genetic material in that organism in a way that does not occur naturally by mating or natural recombination or both and within the terms of this definition:

153 (1) genetic modification occurs at least through the use of the techniques listed in Sch 2 Pt I (ie (a) recombinant nucleic acid techniques involving the formation of new combinations of genetic material by the insertion of nucleic acid molecules, produced by whatever means outside an organism, into any virus, bacterial plasmid or other vector system and their incorporation into a host organism in which they do not naturally occur but in which they are capable of continued propagation; (b) techniques involving the direct introduction into an organism of heritable genetic material prepared outside the organism, including micro-injection, macro-injection and micro-encapsulation; (c) cell fusion or hybridization techniques where live cells with new combinations of heritable genetic material are formed through the fusion of two or more cells by means of methods that do not occur naturally); and

154 (2) the techniques listed in Sch 2 Pt II (ie (a) in vitro fertilisation; (b) natural processes including conjugation, transduction or transformation; (c) polyploidy induction) are not considered to result in genetic modification,

and 'genetically modified' is construed accordingly: reg 2(1).

3 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(1)(a). 'Organism' means a biological entity capable of replication or of transferring genetic material and includes a micro-organism, but does not include a human, human embryo or human admixed embryo: reg 2(1) (definition amended by SI 2009/1892). 'Micro-organism' means a microbiological entity, cellular or non-cellular, capable of replication or of transferring genetic material; and includes a virus, a viroid, and an animal or plant cell in culture: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1). 'Human embryo' means an embryo within the meaning given in the provisions of the Human Fertilisation and Embryology Act 1990 (apart from s 4A) (see **MEDICAL PROFESSIONS**) by virtue of s 1(1), (6) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 102); and 'human admixed embryo' has the same meaning as it has by virtue of s 4A(6), (11) (see **MEDICAL PROFESSIONS**): Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1) (definitions added by SI 2009/1892).

4 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(1)(b).

5 Ie except the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 17 (in relation to principles of occupational and environmental safety): see PARA 816.

6 Ie the techniques referred to in the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 2 Pt III (ie (1) mutagenesis; (2) cell fusion (including protoplast fusion) of prokaryotic species which can exchange genetic material through homologous recombination; (3) cell fusion (including protoplast fusion) of cells of any eukaryotic species, including production of hybridomas and plant cell fusions; (4) self-cloning, where the resulting organism is unlikely to cause disease or harm to humans, animals or plants).

7 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(2).

8 For these purposes, 'product' means a product consisting of or containing a genetically modified organism or a combination of genetically modified organisms: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(7).

9 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3)(a)(i) (amended by SI 2005/2466). The consents are as follows: (1) a consent granted by the Secretary of State or, as regards Wales, by the Welsh Ministers under the Environmental Protection Act 1990 s 111(1) (see PARA 797); or (2) a consent granted by the Northern Ireland Department of the Environment under the Genetically Modified Organisms (Northern Ireland) Order 1991, SI 1991/1714 (NI 19), art 8(1); or (3) a written consent given by the competent authority of an EEA state in accordance with EC Council Directive 1990/220 (OJ L117, 8.5.1990, p 15) on the deliberate release into the environment of genetically modified organisms, art 13(4) (repealed) or EC Council Directive 2001/18 (OJ L106, 17.4.2001, p 1) on the deliberate release of genetically modified organisms into the environment, art 15(3), 17(6) or 18(2) (see PARA 46): see the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3)(a)(i) (as so amended). 'EEA state' means a state, other than the United Kingdom, which is a contracting party to the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2073), as adjusted by the Protocol (Brussels, 17 March 1993, EC 2 (1993); Cm 2183) and adopted as respects the United Kingdom by the European Economic Area Act 1993: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

10 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3)(a)(i).

11 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3)(a)(ii) (amended by SI 2005/2759). The legislation referred to in the text is EC Council Regulation 2309/93 (OJ L214, 24.08.1993, p 1) or European Parliament and EC Council Regulation 726/2004 (OJ L329, 16.12.2005, p 4) laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 19 et seq): see the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3)(a)(ii) (as so amended).

12 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3)(a)(iii) (substituted by SI 2005/2466). The legislation referred to in the text is EC Parliament and Council Regulation 1829/2003 (OJ L268, 18.10.2003, p 1) on genetically modified food and feed: see the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3)(a)(iii) (as so substituted).

13 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3)(a)(iv) (added by SI 2005/2466). The products referred to in the text are food products notified to the European Commission in accordance with EC Parliament and Council Regulation 1829/2003 (OJ L268, 18.10.2003, p 1) on genetically modified food and feed, art 8.1, or feed products notified to the Commission in accordance with art 20.1: see the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3)(a)(iv) (as so added).

14 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 3(3)(b) (amended by SI 2005/2466). The consent of the Secretary of State or the Welsh Ministers would be required under the Environmental Protection Act 1990 s 111(1): see PARA 797. In the case of Northern Ireland, the required consent would be that of the Northern Ireland Department of the Environment under the Genetically Modified Organisms (Northern Ireland) Order 1991, SI 1991/1714 (NI 19), art 8(1).

15 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 25. There is a right of appeal for any person who is aggrieved by a decision of the competent authority to revoke an exemption certificate granted to him or to grant such a certificate subject to a condition or a limit of time pursuant to reg 25: see reg 29, Sch 11 (both amended by SI 2005/2466). 'Competent authority' means, as regards England and Wales, the Secretary of State and the Health and Safety Executive acting jointly: see the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1). As to the Health and Safety Executive see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 361 et seq.

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GENETICALLY MODIFIED ORGANISMS/(3) ACTIVITIES INVOLVING GENETIC MODIFICATION/814.
Risk assessment.

814. Risk assessment.

No person may undertake any activity involving genetic modification¹ of micro-organisms² unless, before commencing that activity, he has ensured that a suitable and sufficient assessment of the risks to human health and the environment has been carried out³. No person may undertake any activity involving genetic modification of organisms⁴ other than micro-organisms unless, before commencing that activity, he has ensured that a suitable and sufficient assessment of the risks created thereby to human health has been carried out⁵. The person carrying out a risk assessment of activities involving either genetically modified⁶ micro-organisms or genetically modified organisms other than micro-organisms must take into account specified matters, and include specified steps⁷. Where there is reason to suspect that an assessment is no longer valid or there has been a significant change in the activity involving genetic modification to which an assessment⁸ relates, the person undertaking the activity involving genetic modification to which the assessment relates must ensure that the assessment is reviewed forthwith⁹. A person who carries out such an assessment must establish a genetic modification safety committee to advise him in relation to that assessment¹⁰.

Exemption may be granted from any or all of the above requirements and prohibitions in respect of any person or class of persons, or any organism or class of organisms¹¹.

1 As to the meaning of 'activity involving genetic modification' see PARA 813 note 2.

2 As to the meaning of 'micro-organism' see PARA 813 note 3.

3 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 6(1). Regulation 6 applies to the transport of genetically modified organisms by road, rail, inland waterway, sea or air, except that, in making the assessment required by reg 6(1), the person undertaking that assessment is not required to include specified steps: see reg 3(5), Sch 3 Pt II para 3(h)-(j).

The person undertaking an activity involving genetic modification: (1) must keep a record of the assessment (ie any assessment under reg 6 or reg 7 (see the text and notes 4-7)) relating to that activity, and any review of that assessment, for at least ten years from the date of the cessation of that activity; and (2) must make such record available to the competent authority when requested to do so: reg 8(2), (3). As to the meaning of 'competent authority' see PARA 813 note 15.

4 As to the meaning of 'organism' see PARA 813 note 3.

5 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 7(1). See note 3.

6 As to the meaning of 'genetically modified' see PARA 813 note 2.

7 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, regs 6(2), 7(2), Schs 3, 4.

8 Ie an assessment under the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 6 or reg 7 (see the text and notes 1-7): see reg 8(3).

9 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 8(1).

10 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 16. This provision applies to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: see reg 3(4).

11 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 25. There is a right of appeal for any person who is aggrieved by a decision of the competent authority to revoke an exemption certificate granted to him or to grant such a certificate subject to a condition or a limit of time pursuant to reg 25: see reg 29, Sch 11 (both amended by SI 2005/2466).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/14. GENETICALLY MODIFIED ORGANISMS/(3) ACTIVITIES INVOLVING GENETIC MODIFICATION/815. Notification requirements.

815. Notification requirements.

No person may use premises for the first time for the purpose of undertaking an activity involving genetic modification¹, unless he has submitted to the competent authority² a notification informing it of his intention to do so containing specified information³, and he has received an acknowledgement from the Health and Safety Executive⁴ of receipt of that notification⁵. Within ten working days⁶ of the competent authority receiving such a notification, the Executive must send to the notifier⁷ an acknowledgement of receipt⁸.

No person may undertake an activity involving genetic modification of micro-organisms⁹ in class 2¹⁰ unless he has submitted a notification to the competent authority informing it of his intention to do so containing specified information¹¹. Within ten working days of the competent authority receiving such a notification, the Executive must send to the notifier an acknowledgement of receipt¹². The competent authority must ensure that any emergency plan¹³ has been prepared¹⁴. No person may undertake: (1) for the first time an activity involving genetic modification of micro-organisms in class 2 at the premises referred to in a notification unless at least 45 days, or such shorter period of time as the competent authority may approve in writing, have or has elapsed since the date on which the acknowledgement was sent and the competent authority has not within that period of 45 days or the shorter period of time approved by the competent authority, as the case may be, informed the notifier that he may not undertake the activity in question, or he has received the required acknowledgement and consent for activities involving genetic modification in class 3 or class 4¹⁵ has already been granted in respect of the premises to which the notification refers¹⁶; (2) for the second or subsequent times an activity involving genetic modification of micro-organisms in class 2 at the premises referred to in a notification unless he has received the required acknowledgement¹⁷. Where a person submits a notification in respect of an activity involving genetic modification of micro-organisms in class 2 which is not to be undertaken for the first time at the premises referred to in the notification, with the notification that person may request that the competent authority makes a decision whether or not to agree to his undertaking the activity in question¹⁸. The competent authority must make such a decision within 45 days of the date on which the acknowledgement was sent¹⁹. No person may undertake an activity involving genetic modification of micro-organisms in class 3 or class 4 unless he has submitted to the competent authority a notification informing it of his intention to do so containing specified information²⁰, and received the written consent of the competent authority to undertake the activity in question²¹. Within ten working days of the competent authority receiving such a notification, the Executive must send to the notifier an acknowledgement of receipt²². Where a person proposes to undertake an activity involving genetic modification of micro-organisms in class 3 or class 4 for the first time at the premises referred to in a notification, the competent authority must inform that person in writing of its decision to grant or refuse consent to undertake the activity in question not more than 90 days after the acknowledgement was sent²³. Where a person proposes to undertake an activity involving genetic modification of micro-organisms in class 3 or class 4 for the second or subsequent times at the premises referred to in a notification, the competent authority must inform that person in writing of its decision to grant or refuse consent to undertake the activity in question not more than 45 days after the acknowledgement was sent²⁴. A consent may be granted subject to conditions²⁵. No person may undertake an activity involving genetic modification of organisms other than micro-organisms unless he has submitted to the competent authority a notification informing it of his intention

to do so and containing specified information²⁶. Within ten working days of the competent authority receiving such a notification, the Executive must send to the notifier an acknowledgement of receipt²⁷. No person may undertake any activity involving genetic modification of organisms other than micro-organisms, unless at least 45 days, or such shorter period of time as the competent authority may approve in writing, have or has elapsed since the date on which the acknowledgement was sent and the competent authority has not within that period of 45 days or the shorter period of time approved by the competent authority, as the case may be, informed the notifier that he may not undertake the activity in question²⁸.

Where a notification is required in respect of premises which are situated on the border of England and Scotland, or in respect of an activity involving genetic modification which is to take place in premises situated on the border of England and Scotland, the notifier must submit a single notification to the joint competent authority²⁹. The competent authority may accept a single notification in respect of a connected programme of work³⁰ undertaken by the same person at one site³¹, or more than one site, or in respect of a single activity involving genetic modification undertaken by the same person at more than one site³².

The competent authority must examine a notification for: (a) conformity with the statutory requirements³³; (b) the accuracy and completeness of the information provided³⁴; (c) the correctness of the assessment carried out³⁵ and submitted to the competent authority with the notification³⁶; (d) the adequacy of the waste management and emergency response measures submitted with the notification³⁷; and (e) in the case of a notification submitted in respect of an activity involving genetic modification of micro-organisms in class 2, 3 or 4, the correctness of the class assigned to the activity involving genetic modification of micro-organisms³⁸. For the purpose of carrying out such an examination, the Executive may request in writing the notifier to provide such additional information relating to the notification as it may specify, and, in such a case, when so requested by the Executive, the notifier must not begin nor continue, as the case may be, the activity involving genetic modification until the competent authority has given its approval in writing³⁹. Where the person who submitted a notification⁴⁰ has commenced the activity involving genetic modification before the Executive requests additional information: (i) the Executive may give to that person instructions concerning the cessation of the activity involving genetic modification⁴¹; (ii) that person must comply with any such instructions⁴²; (iii) subject to any such instructions, that person must continue the activity involving genetic modification only to the extent necessary in order to store or destroy all genetically modified organisms resulting from the activity since its commencement⁴³. If requested to do so by the Secretary of State or the Scottish Ministers, the Executive must request additional information⁴⁴. Within ten working days, the Executive must acknowledge receipt of all additional information provided in response to a request made by the Executive⁴⁵. Where a notifier has not commenced activity involving or relating to genetic modification, and the Executive requests additional information, and the notifier in question does not provide that information within a period of six months of the date on which the Executive sent the request, the competent authority may return the notification to that notifier⁴⁶.

The competent authority may at any time by notice in writing to the person undertaking or proposing to undertake an activity involving genetic modification:

- 2039 (A) set a limit of time for, or impose conditions with regard to, that activity⁴⁷;
- 2040 (B) require that person to suspend, to terminate or not to commence that activity, as the case may be⁴⁸;
- 2041 (C) revoke or vary a consent granted to that person,

and the person to whom the notice is addressed must comply with that notice⁴⁹. A notifier must forthwith send to the competent authority full details in writing of certain changes in information provided by him⁵⁰. Where a notifier subsequently makes a change in the premises or the activity involving genetic modification to which his notification relates which may have

significant consequences for the risks arising from that activity, or becomes aware of any new information which may have significant consequences for the risks arising from that activity, he must forthwith send to the competent authority in writing full details of the change or the new information, as the case may be⁵¹. A notifier may withdraw his notification by giving written notice to the competent authority, provided that the notifier has not commenced the activity involving genetic modification to which the notification relates⁵².

Exemption may be granted from any or all of the above requirements and prohibitions in respect of any person or class of persons, or any organism or class of organisms⁵³.

- 1 As to the meanings of 'activity involving genetic modification' and 'genetic modification' see PARA 813 note 2.
- 2 As to the meaning of 'competent authority' see PARA 813 note 15.
- 3 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 5.
- 4 As to the Health and Safety Executive see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 361 et seq.
- 5 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 9(1). Regulation 9 does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).
- 6 'Working day' means any day other than a Saturday, a Sunday, Christmas Day or Good Friday, or a bank holiday within the meaning given by the Banking and Financial Dealings Act 1971 (see **TIME** vol 97 (2010) PARA 320 et seq): Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1).
- 7 'Notifier' means a person who has submitted a notification to the competent authority pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 9(1) (see the text and notes 4-5), reg 10(1) (see the text and note 11), reg 11(1) (see the text and note 21) or reg 12(1) (see the text and note 26): reg 2(1). As to the register to be maintained by the competent authority of notifications submitted under regs 9-12 see reg 24 (amended by SI 2002/63; SI 2005/466; and SI 2009/693); and the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 24A (added by SI 2002/63).
- 8 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 9(2).
- 9 As to the meanings of 'micro-organism' and 'organism' see PARA 813 note 3.
- 10 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 1 (activities of low risk).
- 11 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(1), Sch 6 Pt I. There is a right of appeal for any person who is aggrieved by a decision of the competent authority that he must not undertake an activity involving genetic modification referred to in reg 10(1): see reg 29, Sch 11 (both amended by SI 2005/2466). The Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10 does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).
- 12 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(2).
- 13 'Emergency plan' means a plan required by virtue of the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 20 (see PARA 816): reg 2(1).
- 14 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(3).
- 15 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 1 (activities of moderate and high risk).
- 16 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(4)(a). When the Executive requests additional information relating to a notification (see the text and note 39) the period of time between the date when the information is requested and the date when the Executive receives that additional information is not to be taken into account in calculating the period of days referred to in reg 10(4): reg 14(6).
- 17 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(4)(b). See note 16.

18 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(5).

19 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 10(6). When the Executive requests additional information relating to a notification (see the text and note 39) the period of time between the date when the information is requested and the date when the Executive receives that additional information is not to be taken into account in calculating the period of days referred to in reg 10(6): reg 14(6).

20 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 6 Pt II (amended by SI 2005/2466).

21 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(1). There is a right of appeal for any person who is aggrieved by a decision of the competent authority that he must not undertake an activity involving genetic modification referred to in reg 11(1): see reg 29, Sch 11 (both amended by SI 2005/2466). The Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11 does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).

22 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(2).

23 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(3). Before granting a consent under reg 11(3), the competent authority must ensure that any emergency plan has been prepared: reg 11(5). Before deciding whether to grant or refuse a consent under reg 11(3), the competent authority must take into account any representations made to it by any person within 30 days of the date on which the Executive sent the acknowledgement of receipt: reg 11(6). When the Executive requests additional information relating to a notification (see the text and note 39) the period of time between the date when the information is requested and the date when the Executive receives that additional information is not to be taken into account in calculating the period of days referred to in reg 11(3): reg 14(6).

24 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(4). Before granting a consent under reg 11(4), the competent authority must ensure that any emergency plan has been prepared: reg 11(5). Before deciding whether to grant or refuse a consent under reg 11(4), the competent authority must take into account any representations made to it by any person within 30 days of the date on which the Executive sent the acknowledgement of receipt: reg 11(6). When the Executive requests additional information relating to a notification (see the text and note 39) the period of time between the date when the information is requested and the date when the Executive receives that additional information is not to be taken into account in calculating the period of days referred to in reg 11(4): reg 14(6).

25 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11(7).

26 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 12(1), Sch 6 Pt III. Regulation 12(1) does not apply to an activity involving genetic modification of organisms where that genetic modification results in a genetically modified organism (other than a micro-organism) which poses no greater risk to humans than its unmodified parental organism: reg 12(2). There is a right of appeal for any person who is aggrieved by a decision of the competent authority that he must not undertake an activity involving genetic modification referred to in reg 12(1): see reg 29, Sch 11 (both amended by SI 2005/2466). The Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 12 does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).

27 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 12(3).

28 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 12(4). When the Executive requests additional information relating to a notification (see the text and note 39) the period of time between the date when the information is requested and the date when the Executive receives that additional information is not to be taken into account in calculating the period of days referred to in reg 12(4): reg 14(6).

29 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 13(1) (amended by SI 2005/2466). 'Joint competent authority' means the competent authority as regards England and Wales and the competent authority as regards Scotland acting jointly: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1). Regulation 13 does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).

30 'Connected programme of work' means a series of activities involving genetic modification which form a coherent and integrated programme: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 13(4)(a).

- 31 'Site' means premises of which the competent authority has been notified in accordance with the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 9(1) (see the text and note 5): reg 13(4)(b).
- 32 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 13(2), (3).
- 33 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(1)(a). Regulation 14 does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).
- 34 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(1)(b). See note 33.
- 35 *le* pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 6(1) or 7(1): see PARA 814.
- 36 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(1)(c). See note 33.
- 37 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(1)(d). See note 33.
- 38 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(1)(e). See note 33.
- 39 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(2). There is a right of appeal for any person who is aggrieved by a request to him made pursuant to reg 14(2): see reg 29, Sch 11 (both amended by SI 2005/2466).
- 40 *le* pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 9(1) (see the text and notes 4-5), reg 10(1) (see the text and note 11), or reg 12(1) (see the text and note 26).
- 41 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(3)(a). There is a right of appeal for any person who is aggrieved by an instruction given to him pursuant to reg 14(3): see reg 29, Sch 11 (both amended by SI 2005/2466).
- 42 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(3)(b). See note 41.
- 43 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(3)(c). See note 41.
- 44 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(4). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.
- 45 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(5).
- 46 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 14(7).
- 47 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(1)(a). There is a right of appeal for any person who is aggrieved by a notice given to him pursuant to reg 15(1): see reg 29, Sch 11 (both amended by SI 2005/2466). The Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15 does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).
- 48 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(1)(b). See note 47.
- 49 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(1)(c). See note 47.
- 50 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(2) (amended by SI 2005/2466).
- 51 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(3) (amended by SI 2005/2466). The Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 11 (see the text and notes 21-25) does not apply where a person undertakes an activity involving genetic

modification with the written consent of the competent authority granted pursuant to reg 11(1) (see the text and note 21) and, but for reg 15(5), the change referred to in reg 15(3) would require that person to make a further notification under reg 11(1): reg 15(5) (amended by SI 2005/2466).

52 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 15(6).

53 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 25. There is a right of appeal for any person who is aggrieved by a decision of the competent authority to revoke an exemption certificate granted to him or to grant such a certificate subject to a condition or a limit of time pursuant to reg 25: see reg 29, Sch 11 (both amended by SI 2005/2466).

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GENETICALLY MODIFIED ORGANISMS/(3) ACTIVITIES INVOLVING GENETIC MODIFICATION/816.
Safety, accidents and emergencies.

816. Safety, accidents and emergencies.

A person who undertakes an activity involving genetic modification¹ must ensure that the exposure of humans and the environment to genetically modified micro-organisms² is reduced to the lowest level that is reasonably practicable, and harm to humans arising from an activity involving genetic modification of organisms other than micro-organisms is reduced to the lowest level that is reasonably practicable³. For any activity involving genetic modification of micro-organisms, the measures to be taken in order to comply with that duty include the general principles of good microbiological practice and of good occupational safety and hygiene⁴. For any activity involving genetic modification of organisms other than micro-organisms, the general principles are to be applied in so far as they are appropriate⁵.

A person who undertakes an activity involving genetic modification of micro-organisms must apply certain containment measures, where and to the extent required⁶. Where a risk assessment⁷, or any review of that assessment, shows that a particular containment measure of the appropriate containment level is not necessary or practicable for the activity involving genetic modification of micro-organisms to which the assessment relates, the person undertaking that activity, after providing full justification to, and with the written agreement of, the competent authority⁸, need not apply that containment measure for the activity in question⁹. A person who undertakes an activity involving genetic modification of micro-organisms must review the containment measures applied by him at suitably regular intervals¹⁰, and forthwith if that person suspects that: (1) the containment measures are no longer adequate¹¹; (2) the class¹² in relation to the activity involving genetic modification of micro-organisms identified in the risk assessment is no longer appropriate¹³; or (3) in the light of new scientific or technical knowledge, the risk assessment is no longer valid¹⁴. A person who undertakes an activity involving genetic modification of organisms other than micro-organisms must apply the containment measures selected in accordance with the assessment made¹⁵. That person must review the containment measures applied by him at suitably regular intervals, and forthwith if that person suspects that the containment measures applied are no longer adequate, or in the light of new scientific or technical knowledge, the assessment is no longer valid¹⁶.

Where a risk assessment of activities involving genetically modified micro-organisms¹⁷ shows that, as a result of any reasonably foreseeable accident¹⁸, the health or safety of persons outside the premises in which an activity involving genetic modification is carried on is liable to be seriously affected, or there is a risk of serious damage to the environment, the person undertaking that activity must ensure that, before the activity to which the assessment relates begins, a suitable plan is prepared with a view to securing the health and safety of those persons and the protection of the environment¹⁹. Where a risk assessment of activities involving genetically modified organisms other than micro-organisms²⁰ shows that, as a result of any reasonably foreseeable accident, the health or safety of persons outside the premises in which an activity involving genetic modification is undertaken is liable to be seriously affected, the person undertaking that activity must ensure that, before the activity to which the assessment relates begins, a suitable plan is prepared with a view to securing the health and safety of those persons²¹. Every emergency plan²² must include the measures to be taken in the event of an accident to which the plan relates, and must be reviewed and, where necessary, revised at suitably regular intervals²³. The person undertaking the activity involving genetic modification which is the subject of an emergency plan must inform the emergency services²⁴ and any body

or authority liable to be affected by an accident to which the plan relates of the contents of the plan and of any relevant revisions made and must make the plan and any such revisions publicly available²⁵.

Where an accident occurs, the person undertaking the activity involving genetic modification must forthwith inform the competent authority of the accident and provide the following information: (a) the circumstances of the accident²⁶; (b) the identity and quantity of the genetically modified organisms concerned²⁷; (c) any information necessary to assess the effects of the accident on the health of the general population and on the environment²⁸; and (d) any measures taken in response to the accident²⁹. Where the competent authority is informed of an accident, it must: (i) ensure that any necessary measures are taken³⁰; (ii) immediately inform those EEA states³¹ which could be affected by the accident³²; (iii) collect, where possible, the information necessary for a full analysis of the accident and, where appropriate, make recommendations to avoid similar accidents in the future and to limit their effects³³; and (iv) send to the European Commission: (A) the information specified in heads (a), (b) and (d) above³⁴; (B) information on the effectiveness of the measures taken in response to the accident³⁵; and (C) an analysis of the accident, including recommendations to limit its effects and to avoid similar accidents in the future³⁶.

Exemption may be granted from any or all of the above requirements and prohibitions in respect of any person or class of persons, or any organism or class of organisms³⁷.

1 As to the meanings of 'activity involving genetic modification' and 'genetic modification' see PARA 813 note 2.

2 As to the meanings of 'micro-organism' and 'organism' see PARA 813 note 3.

3 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 17(1).

4 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 17(2), Sch 7. Regulation 17(2) does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).

5 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 17(3), Sch 7. Regulation 17(3) does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).

6 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(1), Sch 8 (Sch 8 amended by SI 2005/2466). The Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18 does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).

7 'Risk assessment' means an assessment carried out pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 6 (see PARA 814): reg 18(4).

8 As to the meaning of 'competent authority' see PARA 813 note 15.

9 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(2) (amended by SI 2005/2466). There is a right of appeal for any person who is aggrieved by a decision of the competent authority not to agree pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(2) that he need not apply a particular containment measure for the activity involving genetic modification in question: see reg 29, Sch 11 (both amended by SI 2005/2466).

10 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(3)(a).

11 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(3)(b)(i).

12 'Class' in relation to an activity involving genetic modification of micro-organisms, means one of the four classes described in the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, Sch 1: reg 2(1).

13 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(3)(b)(ii).

- 14 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 18(3)(b)(iii).
- 15 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 19(1). Regulation 19 does not apply to the transport of genetically modified organisms by road, rail, inland waterway, sea or air: reg 3(4).
- 16 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 19(2).
- 17 *le* pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 6(1): see PARA 814.
- 18 'Accident' means an incident involving a significant and unintended release of genetically modified organisms in the course of an activity involving genetic modification which presents an immediate or delayed hazard to human health or to the environment: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1).
- 19 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 20(1).
- 20 *le* pursuant to the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 7(1): see PARA 814.
- 21 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 20(2).
- 22 As to the meaning of 'emergency plan' see PARA 815 note 13.
- 23 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 20(3).
- 24 'Emergency services' means the police, fire and ambulance services: Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 2(1).
- 25 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 20(4).
- 26 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(1)(a).
- 27 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(1)(b).
- 28 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(1)(c).
- 29 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(1)(d).
- 30 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(2)(a).
- 31 As to the meaning of 'EEA state' see PARA 813 note 9.
- 32 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(2)(b).
- 33 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(2)(c).
- 34 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(2)(d)(i).
- 35 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(2)(d)(ii).
- 36 Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 21(2)(d)(iv).
- 37 See the Genetically Modified Organisms (Contained Use) Regulations 2000, SI 2000/2831, reg 25. There is a right of appeal for any person who is aggrieved by a decision of the competent authority to revoke an exemption certificate granted to him or to grant such a certificate subject to a condition or a limit of time pursuant to reg 25: see reg 29, Sch 11 (both amended by SI 2005/2466).

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15. NOISE CONTROL

(1) IN GENERAL

817. Introduction.

Not only is some noise a statutory nuisance¹ under the environmental protection legislation², but also certain types of noise are subject to specific legislative regimes. The specific types of noise subject to these measures include: noise from loudspeakers in streets³; noise from audible intruder alarms on or in any premises⁴; noise from a dwelling at night-time⁵; noise within a noise abatement area⁶; noise from a construction site⁷; and noise from plant or machinery⁸. Noise produced by motor vehicles and noise produced by aircraft are regulated by specific provisions considered elsewhere in this work⁹. Noise produced from household appliances and lawnmowers has also been made the subject of special regulation¹⁰. Provision is made for the closure of noisy premises which have a premises licence or a temporary event notice¹¹.

1 As to statutory nuisances see **NUISANCE** vol 78 (2010) PARAS 115, 155 et seq, 199 et seq. As to the meaning of 'nuisance' see **NUISANCE** vol 78 (2010) PARA 159.

2 Ie the Environmental Protection Act 1990 Pt III (ss 79-84): see **NUISANCE** vol 78 (2010) PARA 155 et seq.

3 See PARA 841.

4 See PARA 843 et seq.

5 See PARA 848 et seq.

6 See PARA 824 et seq.

7 See PARA 835 et seq.

8 See PARA 840.

9 As to noise from motor vehicles see eg the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982, SI 1982/1271; the Motor Vehicles (Type Approval) (Great Britain) Regulations 1984, SI 1984/981; the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078; the Motor Vehicles (Approval) Regulations 2001, SI 2001/25; the Road Vehicles (Approval) Regulations 2009, SI 2009/717; and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 702 et seq. See also **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 610 et seq.

As to noise from motorcycles see the Motor Cycle Noise Act 1987; the Motorcycles (Sound Level Measurement Certificate) Regulations 1980, SI 1980/765; the Motor Cycle Silence and Exhaust Systems Regulations 1995, SI 1995/2370; and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 613.

See also EEC Council Directive 70/157 (OJ L42, 23.2.70, p 16) on the approximation of the laws of the member states relating to the permissible sound level and the exhaust systems of motor vehicles; EEC Council Directive 74/151 (OJ L84, 28.3.74, p 25) on the approximation of the laws of the member states relating to certain parts and characteristics of wheeled agricultural or forestry tractors; and PARA 53.

As to the need for noise certificates in relation to aircraft see the Civil Aviation Act 1982 s 60(3)(r); the Aeroplane Noise Regulations 1999, SI 1999/1452; the Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133; and **AIR LAW** vol 2 (2008) PARAS 353, 396 et seq. As to noise at aerodromes see the Aeroplane Noise Regulations 1999, SI 1999/1452; the Air Navigation Order 2005, SI 2005/1970; and **AIR LAW** vol 2 (2008) PARA 396 et seq. No claim for nuisance may be brought arising out of such noise and vibrations provided that they are within the prescribed conditions: see the Civil Aviation Act 1982 s 77(2); and **AIR LAW** vol 2 (2008) PARAS 259, 656. As to the regulation of take off and landing of aeroplanes at designated airports see the Civil Aviation Act 1982 s 78(1); the Civil Aviation (Designation of Aerodromes) Order 1981, SI 1981/651; and **AIR LAW** vol 2 (2008) PARA 260. Noise created by the flight of an aeroplane over land does not found a claim in private nuisance: see the Civil Aviation Act 1982 s 76; and **AIR LAW** vol 2 (2008) PARA 656. Noise created by aeroplanes other than model aircraft is not a statutory nuisance: see the Environmental Protection Act 1990 s 79(6); and **NUISANCE** vol 78 (2010) PARA 165.

10 See the Household Appliances (Noise Emission) Regulations 1990, SI 1990/161; and PARA 53. See also the Noise Emission in the Environment by Equipment for Use Outdoors Regulations 2001, SI 2001/1701; and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 483.

- 11 See the Anti-social Behaviour Act 2003 s 40; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 182.

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818. European Union legislation.

There is European Union legislation relating to noise control, which deals with noise from vehicles¹, construction plant², aircraft³ and household appliances⁴. For the purposes of implementing the EU legislation relating to noise from vehicles in England and Wales the Road Traffic Act 1988 was passed and regulations were made under it⁵. The main means of implementation of EU legislation relating to noise from other sources is by way of regulations⁶.

1 See PARA 53.

2 See PARA 53.

3 See PARA 53.

4 See PARA 53.

5 See PARA 817 note 9; and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 610 et seq.

6 See eg the Noise Emission in the Environment by Equipment for Use Outdoors Regulations 2001, SI 2001/1701; and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 483. See also PARA 817.

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(2) GENERAL PROVISIONS RELATING TO NOISE UNDER THE

819. Codes of practice.

For the purpose of giving guidance on appropriate methods, including the use of specified types of plant or machinery, for minimising noise¹, the Secretary of State² may:

- 2042 (1) prepare and approve and issue such codes of practice as in his opinion are suitable for the purpose³; and
- 2043 (2) approve such codes of practice issued or proposed to be issued otherwise than by him as in his opinion are suitable for the purpose⁴.

The Secretary of State must approve a code of practice for the carrying out of works⁵ on construction sites⁶.

The powers conferred on the Secretary of State under these provisions are exercisable by order, and include power to vary or revoke a previous order⁷.

1 'Noise' includes vibration: Control of Pollution Act 1974 s 73(1). The provisions of Pt III (ss 57-74) do not apply to noise caused by aircraft other than model aircraft: s 73(4). Cf **NUISANCE** vol 78 (2010) PARA 165.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Control of Pollution Act 1974 s 71(1)(a).

4 Control of Pollution Act 1974 s 71(1)(b). As to codes of practice for the carrying out of works to which the Control of Pollution Act 1974 applies see the British Standards Institution Code of Practice for noise control on construction and demolition sites published on 30 May 1975 (No BS5228: 1975); the British Standards Institution Code of Practice for noise control applicable to piling operations (No BS 5228: Part 4: 1986), which came into effect on 31 January 1986; and the British Standards Institution Code of Practice for basic information and procedures for noise and vibration control on construction and open sites published on 15 May 1997 (No BS 5228-1: 1997). See also the Control of Noise (Codes of Practice for Construction and Open Sites) (England) Order 2002, SI 2002/461; and the Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2002, SI 2002/1795. As to codes of practice relating to the control of noise under the Control of Pollution Act 1974 see the Control of Noise (Code of Practice on Noise from Ice-Cream Van Chimes etc) Order 1981, SI 1981/1828; the Control of Noise (Code of Practice on Noise from Audible Intruder Alarms) Order 1981, SI 1981/1829; and the Control of Noise (Code of Practice on Noise from Model Aircraft) Order 1981, SI 1981/1830. See also Department of the Environment Circular 2/82; and the Code of Practice on Environmental Noise Control at Concerts 1995, prepared by the Noise Council.

5 I.e. works to which the Control of Pollution Act 1974 s 60 applies: see PARA 835.

6 Control of Pollution Act 1974 s 71(2). As to the code of practice that has been made see note 4. As to construction sites see PARA 835 et seq.

7 Control of Pollution Act 1974 s 71(3). As to the orders made see note 4.

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820. Meaning of 'person responsible'.

For the purposes of Part III of the Control of Pollution Act 1974¹, the 'person responsible' in relation to the emission of noise², means the person to whose act, default or sufferance the noise is attributable³. Where more than one person is responsible for noise, these provisions apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance⁴, or would result in a level of noise justifying action under Part III of the Control of Pollution Act 1974⁵.

1 Ie the Control of Pollution Act 1974 Pt III (ss 57-74).

2 As to the meaning of 'noise' see PARA 819 note 1.

3 Control of Pollution Act 1974 s 73(1) (definition amended by the Environment Act 1995 Sch 24).

4 As to the meaning of 'nuisance' see **NUISANCE** vol 78 (2010) PARA 159.

5 Control of Pollution Act 1974 s 73(3).

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821. Procedure for appeals.

Where there is an appeal to a magistrates' court under Part III of the Control of Pollution Act 1974¹, the procedure is by way of complaint for an order².

The Secretary of State³ may make regulations as to appeals under Part III of the Control of Pollution Act 1974 to the Secretary of State or to magistrates' courts⁴. Regulations under these provisions may prescribe the procedure and practice as respects appeals to the Secretary of State under Part III of the Control of Pollution Act 1974⁵.

In entertaining any appeal under Part III of the Control of Pollution Act 1974, the Secretary of State or (as the case may be) the magistrates' court must have regard to any duty imposed by law on the appellant which concerns the activities in the course of which the noise is emitted⁶.

1 le the Control of Pollution Act 1974 Pt III (ss 57-74).

2 Control of Pollution Act 1974 s 70(1). The Magistrates' Courts Act 1980 (see **MAGISTRATES**) applies to the proceedings: s 70(1); Interpretation Act 1978 s 17(2)(a).

3 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 Control of Pollution Act 1974 s 70(2). This power is subject to s 70(1) (see the text and notes 1-2): s 70(2).

The regulations may in particular: (1) include provisions comparable to those in the Public Health Act 1936 s 290 (see PARAS 125-127); (2) prescribe the cases in which a notice under the Control of Pollution Act 1974 Pt III is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings; (3) prescribe the cases in which the decision on appeal may in some respects be less favourable to the appellant than the decision from which he is appealing; (4) prescribe the cases in which the appellant may claim that a notice should have been served on some other person and prescribe the procedure to be followed in those cases: s 70(2).

As to the regulations made see the Control of Noise (Appeals) Regulations 1975, SI 1975/2116 (amended by SI 1990/2276).

5 Control of Pollution Act 1974 s 70(3). The regulations may in particular make provision as respects: (1) the particulars to be included in the notice of appeal; (2) the persons on whom notice of appeal is to be served and the particulars, if any, to accompany the notice; and (3) the abandonment of any appeal: s 70(3). As to the regulations made see note 4.

6 Control of Pollution Act 1974 s 70(4). As to the meaning of 'noise' see PARA 819 note 1. The phrase 'have regard' has no precise legal meaning: *Simpson v Edinburgh Corpn* 1960 SC 313, 1961 SLT 17, Ct of Sess.

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822. Penalties for offences.

A person guilty of an offence against Part III of the Control of Pollution Act 1974¹ is liable on summary conviction to a penalty² together with a further penalty³ for each day on which the offence continues after the conviction⁴.

1 Ie the Control of Pollution Act 1974 Pt III (ss 57-74).

2 Control of Pollution Act 1974 s 74(1) (amended by virtue of the Criminal Justice Act 1982 ss 35, 38, 46). The penalty is a fine not exceeding level 5 on the standard scale: see the Control of Pollution Act 1974 s 74(1) (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

3 The penalty is a fine not exceeding £50 for each day on which the offence continues: see the Control of Pollution Act 1974 s 74(1) (as amended: see note 2).

4 Control of Pollution Act 1974 s 74(1) (as amended: see note 2). In determining whether an offence is a second or subsequent offence against Pt III, account is to be taken of any offence: (1) under the Public Health (Scotland) Act 1897 by way of contravening a decree or interdict relating to noise; or (2) under the Public Health Act 1936 s 95 (repealed) by way of contravening a nuisance order relating to noise; or (3) under the Environmental Protection Act 1990 s 80(4) (see **NUISANCE** vol 78 (2010) PARA 203), as if it were an offence against the Control of Pollution Act 1974 Pt III: s 74(2) (amended by the Environmental Protection Act 1990 Sch 15 para 15). 'Contravention' includes a failure to comply with the provision in question; and 'contravene' is to be construed accordingly: Control of Pollution Act 1974 s 73(1).

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823. Best practicable means.

For the purposes of Part III of the Control of Pollution Act 1974¹, it may in certain circumstances be a defence to show that the best practicable means have been used to prevent or counteract the effects of the noise². In construing references to 'best practicable means', the following points apply³:

2044 (1) 'practicable' means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications⁴;

2045 (2) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and acoustic structures⁵;

2046 (3) the test of best practicable means is to apply only so far as compatible with any duty imposed by law, and in particular is to apply to statutory undertakers⁶ only so far as compatible with the duties imposed on them in their capacity of statutory undertakers⁷;

2047 (4) the test of best practicable means is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances⁸;

2048 (5) subject to heads (1) to (4) above, regard must be had to any relevant provisions of an approved code of practice⁹.

1 Ie the Control of Pollution Act 1974 Pt III (ss 57-74).

2 Cf the Environmental Protection Act 1990 ss 79(9), 80(7); and **NUISANCE** vol 78 (2010) PARAS 161, 204.

3 Control of Pollution Act 1974 s 72(1).

4 Control of Pollution Act 1974 s 72(2).

5 Control of Pollution Act 1974 s 72(3).

6 'Statutory undertakers' means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power, and includes a universal service provider in his capacity as a person who provides a universal postal service, the Environment Agency, every water undertaker, every sewerage undertaker, the holder of a licence under the Electricity Act 1989 s 6(1), and a gas transporter: Control of Pollution Act 1974 s 73(1) (definition amended by the Gas Act 1986 Sch 9 Pt I; the Electricity Act 1989 Sch 18; the Water Act 1989 Sch 25 para 48(8); and SI 2001/1149; and by virtue of the Electricity Act 1989 Sch 16 para 1(1)(xxvii); the Water Act 1989 Sch 25 para 1(1), (2)(xix); and the Gas Act 1995 Sch 4 paras 1, 2(1)(xxii)). As to the provision of a universal postal service see **POST OFFICE** vol 36(2) (Reissue) PARA 24. As to the Environment Agency see PARA 68 et seq. As to water undertakers and sewerage undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 et seq. As to sewerage undertakers see also PARA 999. As to holders of licences under the Electricity Act 1989 s 6(1) see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1053 et seq. As to gas transporters see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 805 et seq.

7 Control of Pollution Act 1974 s 72(4).

8 Control of Pollution Act 1974 s 72(5).

9 Control of Pollution Act 1974 s 72(6). The reference in the text is a reference to a code of practice approved under s 71: see PARA 819.

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(3) NOISE ABATEMENT ZONES

824. Designation of noise abatement zones.

Under the Control of Pollution Act 1974, there is provision for the setting of a maximum level for noise in certain areas¹. A local authority² may by order (a 'noise abatement order'³) designate all or any part of its area a noise abatement zone⁴. A noise abatement order must specify the classes of premises⁵ to which it applies⁶. A noise abatement order may be revoked or varied by a subsequent noise abatement order⁷.

1 See the Control of Pollution Act 1974 ss 63-67. See also PARA 825 et seq. As to the meaning of 'noise' see PARA 819 note 1.

2 As to the meaning of 'local authority' see PARA 99.

3 Control of Pollution Act 1974 ss 63(5), 73(1).

4 Control of Pollution Act 1974 s 63(1) (s 63(1), (3) amended by the Local Government, Planning and Land Act 1980 Sch 2 para 14, Sch 34 Pt II). 'Noise abatement zone' means a zone so designated: see the Control of Pollution Act 1974 ss 63(1), 73(1).

5 Under the Control of Pollution Act 1974, 'premises' includes land: s 105(1). As to the meaning of 'premises' under the Public Health Act 1936, the Public Health (Control of Disease) Act 1984 and the Clean Air Act 1993 see PARAS 1 note 34, 210 note 5.

6 Control of Pollution Act 1974 s 63(2).

7 Control of Pollution Act 1974 s 63(3) (as amended: see note 4).

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825. Making of a noise abatement order.

Before making a noise abatement order¹, the local authority² must serve notice³ of its proposal to make the order on every owner⁴, lessee and occupier (other than tenants for a month or any period less than a month) of any premises⁵ within the area and of a class to which the order will relate⁶. The local authority must also publish such a notice in the London Gazette and once at least in each of two successive weeks in some newspaper circulating in the area to which the order will relate⁷. The notice must:

- 2049 (1) state that the local authority proposes to make the order, and its general effect⁸;
- 2050 (2) specify a place in the area of the local authority where a copy of the order and of any map or plan referred to in it may be inspected by any person free of charge at all reasonable times during a period of not less than six weeks from the date of the last publication of the notice⁹; and
- 2051 (3) state that within that period any person who will be affected by the order may by notice in writing to the local authority object to the making of the order¹⁰.

If such an objection is made and not withdrawn, the local authority may not make the order without first considering the objection¹¹, although it need not do so if satisfied that compliance is unnecessary having regard to the nature of the premises to which the order will relate when it comes into force or to the nature of the interests of the persons who have made objections which have not been withdrawn¹². Where the order varies or revokes a previous order, the local authority may also disregard any objection to the order which in its opinion amounts in substance to an objection which was made to the previous order¹³.

A noise abatement order comes into operation on such date after it is made as is specified in it¹⁴. However, if, before the date on which the order is to come into operation, the local authority: (a) passes a resolution postponing the coming into operation of the order¹⁵; and (b) publishes a notice stating the effect of the resolution in the London Gazette and once at least in each of two successive weeks in a newspaper circulating in the area to which the order relates¹⁶, then the order comes into operation on the date specified in the resolution, unless there is a further postponement under head (a) above¹⁷.

1 As to the meaning of 'noise abatement order' see PARA 824.

2 As to the meaning of 'local authority' see PARA 99.

3 As to the meaning of 'notice' see PARA 132 note 3.

4 'Owner' means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the premises were let at a rackrent: Control of Pollution Act 1974 s 105(1).

5 As to the meaning of 'premises' see PARA 824 note 5.

6 Control of Pollution Act 1974 s 63(4), Sch 1 para 1(a) (s 63(4) amended by the Local Government, Planning and Land Act 1980 Sch 2 para 14, Sch 34 Pt II; and the Control of Pollution Act 1974 Sch 1 substituted by the Local Government, Planning and Land Act 1980 Sch 2 para 18).

7 Control of Pollution Act 1974 Sch 1 para 1(b) (as substituted: see note 6).

- 8 Control of Pollution Act 1974 Sch 1 para 2(a) (as substituted: see note 6).
- 9 Control of Pollution Act 1974 Sch 1 para 2(b) (as substituted: see note 6).
- 10 Control of Pollution Act 1974 Sch 1 para 2(c) (as substituted: see note 6).
- 11 Control of Pollution Act 1974 Sch 1 para 3(1) (as substituted: see note 6).
- 12 Control of Pollution Act 1974 Sch 1 para 3(2) (as substituted: see note 6).
- 13 Control of Pollution Act 1974 Sch 1 para 3(3) (as substituted: see note 6).
- 14 Control of Pollution Act 1974 Sch 1 para 4(1) (as substituted: see note 6). Except in the case of an order revoking an existing order or varying an existing order by excluding from it any specified class of premises, the date specified must not be a date earlier than one month from the date on which the order is made: Sch 1 para 4(2) (as so substituted).
- 15 Control of Pollution Act 1974 Sch 1 para 5(a) (as substituted: see note 6).
- 16 Control of Pollution Act 1974 Sch 1 para 5(b) (as substituted: see note 6).
- 17 Control of Pollution Act 1974 Sch 1 para 5 (as substituted: see note 6).

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826. Noise level register.

Every local authority¹ which has designated its area or any part of its area a noise abatement zone² must measure the level of noise³ emanating from premises within the zone which are of any class to which the relevant noise abatement order relates⁴. The premises as to which a local authority is to make measurements under these provisions include those which come within a class to which the relevant noise abatement order relates after the making of the order; and it is for the local authority to determine, both for those premises and all other premises of any class to which the relevant noise abatement order relates, where the measurements are to be made⁵.

The local authority must record all measurements taken in a register (a 'noise level register'⁶) to be kept by the local authority for the purpose⁷.

On recording any measurement in the noise level register, the local authority must serve a copy of that record on the owner⁸ and occupier of the premises in respect of which the measurement was taken⁹. Any person on whom a copy of such a record is served may, within 28 days of the date of service, appeal to the Secretary of State against the record¹⁰.

The register must be open to public inspection at the principal office of the local authority free of charge at all reasonable hours, and the local authority must afford members of the public reasonable facilities for obtaining, on payment of reasonable charge, copies of entries in the register¹¹.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'noise abatement zone' see PARA 824.

3 As to the meaning of 'noise' see PARA 819 note 1. Provision may be made by regulations: (1) for determining, or for authorising the Secretary of State to determine, the methods by which noise levels are to be measured for the purposes of the Control of Pollution Act 1974 ss 64-67 (s 64(8)(a)); and (2) for enabling noise levels calculated in accordance with the regulations, or in accordance with the directions of the Secretary of State, to be treated for those purposes as measured by a method determined in pursuance of head (1) above (s 64(8)(b)). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. The Control of Noise (Measurement and Registers) Regulations 1976, SI 1976/37, have been made, applying inter alia to the measurement and calculation by local authorities in England and Wales of levels of noise emanating from classified premises: see regs 1, 3. 'Classified premises' means premises of any specified class to which a noise abatement order for the time being applies: see reg 2. As to the meaning of 'premises' see PARA 824 note 5. As to the meaning of 'noise abatement order' see PARA 824.

Under these regulations, the methods by which levels of noise emanating from classified premises are to be measured, or, in so far as they cannot be measured by such methods, calculated are set out in reg 4(1), Schedule. However, if it appears to the Secretary of State, whether in consequence of representations made to him or otherwise, that, in order to facilitate the effective or more effective performance by a local authority of its functions in pursuance of any of the provisions of the Control of Pollution Act 1974 ss 64-66, it is necessary or expedient in any circumstances to provide for the measurement or calculation of noise levels by methods other than those so described, he may in those circumstances determine the methods by which levels of noise emanating from premises are to be measured or calculated by the local authority and may give directions to the authority accordingly: Control of Noise (Measurement and Registers) Regulations 1976, SI 1976/37, reg 4(2). Noise levels calculated in accordance with these regulations or in accordance with directions given by the Secretary of State under reg 4 may be treated, for the purpose of the Control of Pollution Act 1974 s 64 relating to the measurement of noise levels, to the recording of measurements in the noise level register and to measurements when so recorded, as measured by a method determined in pursuance of s 64(8)(a) (see head (1) above): Control of Noise (Measurement and Registers) Regulations 1976, SI 1976/37, reg 5.

4 Control of Pollution Act 1974 s 64(1).

5 Control of Pollution Act 1974 s 64(6).

6 Control of Pollution Act 1974 ss 64(2), 73(1).

7 Control of Pollution Act 1974 s 64(2). The register must be kept in accordance with regulations: see s 64(2). Under the Control of Noise (Measurement and Registers) Regulations 1976, SI 1976/37, the noise level register must be kept so as to show, in relation to each of the premises in respect of which an entry falls to be made: (1) the address, or other sufficient identification, of the premises and the specified class to which they belong or, where the Control of Pollution Act 1974 s 67(1) (see PARA 827) applies, will belong; (2) any cancellation or alteration of an entry in the register and the reason for the cancellation or alteration; (3) the date on which each entry, cancellation or alteration is made: Control of Noise (Measurement and Registers) Regulations 1976, SI 1976/37, reg 6(1)(a), (c), (d). Further, the record in the register of a noise level which has been ascertained by methods of measurement or calculation, or by a combination of such methods, must contain particulars, where appropriate, of any methods determined by the Secretary of State under reg 4(2) (see note 3), and the details of all relevant measurements and calculations including: (a) the location (including height) of each point at which the measurements were taken, or for which the calculations were made; (b) relevant details of any equipment used for the purpose; and (c) the dates and times when any such measurements were taken and relevant details of the prevailing weather conditions: reg 6(1)(b), (2). The register must include an index, which may be in the form of, or may incorporate, a map: reg 6(3). Subject to these provisions, the noise level register must be kept in such a form (whether in one or more parts), and may include such additional material (including plans, drawings and photographs) in relation to any of the matters recorded in it, as the local authority considers appropriate: reg 6(4). The register must also record: (i) particulars of any consent (see the Control of Pollution Act 1974 s 65(2); and PARA 828); (ii) particulars of any noise reduction notice (see s 66(6); and PARA 831); and (iii) the level of noise determined for a new building (see s 67(1), (2); and PARA 827).

8 As to the meaning of 'owner' see PARA 825 note 4.

9 Control of Pollution Act 1974 s 64(3).

10 Control of Pollution Act 1974 s 64(3). Except as provided by s 64, the validity or accuracy of any entry in a noise level register may not be questioned in any proceedings under Pt III (ss 57-74): s 64(5). As to appeals see PARAS 821, 829.

11 Control of Pollution Act 1974 s 64(7).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/15. NOISE CONTROL/(3) NOISE ABATEMENT ZONES/827. Noise levels for new buildings.

827. Noise levels for new buildings.

Where it appears to the local authority¹: (1) that a building is going to be constructed and that a noise abatement order² will apply to it when it is erected³; or (2) that any premises⁴ will, as the result of any works, become premises to which a noise abatement order applies⁵, the local authority may, on the application of the owner⁶ or occupier of the premises or of a person who satisfies the authority that he is negotiating to acquire an interest in the premises or on its own initiative, determine the level of noise⁷ which will be acceptable as that emanating from the premises⁸. The local authority must record in the noise level register⁹ the level of noise so determined for any premises¹⁰.

The local authority must give notice of its intention to the applicant or, in the case of a decision made on its own initiative, to the owner or the occupier of the premises, and the recipient of the notice may appeal to the Secretary of State¹¹ against that decision within three months of the date on which the local authority notifies him of that decision¹². It is the duty of the local authority to act in accordance with the decision of the Secretary of State on the appeal¹³.

If, within the period of two months beginning with the date when the local authority receives an application under these provisions, the authority has not given notice to the applicant of its decision on the application, the authority is deemed to have given him notice on the expiration of that period that it has decided not to make a determination in pursuance of the application, and the applicant may accordingly appeal¹⁴ against the decision to the Secretary of State¹⁵.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'noise abatement order' see PARA 824.

3 Control of Pollution Act 1974 s 67(1)(a).

4 As to the meaning of 'premises' see PARA 824 note 5.

5 Control of Pollution Act 1974 s 67(1)(b).

6 As to the meaning of 'owner' see PARA 825 note 4.

7 As to the measurement of noise levels see PARA 826 note 3.

8 Control of Pollution Act 1974 s 67(1). Where at any time after the coming into force of a noise abatement order any premises become premises to which the order applies as a result of the construction of a building or as a result of any works carried out on the premises but no level of noise has been determined under s 67 as respects the premises, the provisions relating to reduction of noise levels (ie s 66: see PARA 831 et seq) apply with modifications: see s 67(5); and PARAS 831, 834.

9 As to the meaning of 'noise level register' see PARA 826.

10 Control of Pollution Act 1974 s 67(2).

11 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

12 Control of Pollution Act 1974 s 67(3). As to appeals see PARAS 821, 829.

13 Control of Pollution Act 1974 s 67(3).

14 Ie in pursuance of Control of Pollution Act 1974 s 67(3): see the text and note 12.

15 Control of Pollution Act 1974 s 67(4).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/15. NOISE CONTROL/(3) NOISE ABATEMENT ZONES/828. Consent for noise exceeding the level recorded in the noise level register.

828. Consent for noise exceeding the level recorded in the noise level register.

The level of noise¹ recorded in the noise level register² in respect of any premises³ may not be exceeded except with the consent in writing of the local authority⁴. The consent may be made subject to such conditions, whether as to the amount by which the level of noise may be increased, or as to the period for which, or the periods during which, the level of noise may be increased, as may be specified in the consent⁵. The authority must record particulars of the consent in the noise level register⁶.

If, within the period of two months beginning with the date on which a local authority receives an application for its consent or within such longer period as the authority and the applicant agree in writing, the authority has not notified the applicant of its decision on the application, the authority is deemed to have refused consent⁷.

An applicant for a consent may appeal to the Secretary of State⁸ against the local authority's decision on the application⁹. It is the duty of the local authority to act in accordance with the decision of the Secretary of State on the appeal¹⁰.

1 As to the meaning of 'noise' see PARA 819 note 1. As to the measurement of noise levels see PARA 826 note 3.

2 As to the meaning of 'noise level register' see PARA 826.

3 As to the meaning of 'premises' see PARA 824 note 5.

4 Control of Pollution Act 1974 s 65(1). As to the meaning of 'local authority' see PARA 99. As to the consequences of contravention see PARA 830. A consent must contain a statement to the effect that the consent does not of itself constitute any ground of defence against any proceedings instituted under the Environmental Protection Act 1990 s 82 (see **NUISANCE** vol 78 (2010) PARAS 210-212): Control of Pollution Act 1974 s 65(8) (amended by the Environment Act 1995 Sch 24; and the Environmental Protection Act 1990 Sch 15 para 15). A consent does, however, constitute a defence to proceedings instituted under the Environmental Protection Act 1990 s 80(4) (see **NUISANCE** vol 78 (2010) PARA 203): see s 80(9)(a); and **NUISANCE** vol 78 (2010) PARA 204.

5 Control of Pollution Act 1974 s 65(2).

6 Control of Pollution Act 1974 s 65(2).

7 See the Control of Pollution Act 1974 s 65(3).

8 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Control of Pollution Act 1974 s 65(4). The appeal must be made within the period of three months beginning with the date on which the authority notifies the applicant of the decision or, in a case falling within s 65(3) (see the text and note 7), beginning with the expiration of the two month period or agreed longer period there mentioned: s 65(4). As to appeals see PARAS 821, 829.

10 Control of Pollution Act 1974 s 65(4).

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829. Appeals relating to entries in the noise level register, new buildings and consents.

Any person on whom a copy of a record of any measurement in the noise level register¹ is served² may appeal to the Secretary of State³ against the record⁴; an applicant for a consent⁵ in relation to noise⁶ exceeding the level of noise⁷ recorded in the noise level register may appeal to the Secretary of State against the local authority's⁸ decision on the application⁹; and the recipient of a notice relating to noise levels for new buildings may also appeal to the Secretary of State¹⁰.

Any person who brings any such appeal must give notice of appeal in writing, stating the grounds of the appeal, to the Secretary of State¹¹. Within seven days of giving that notice (or such longer time as the Secretary of State may at any time allow) the appellant must send the Secretary of State a copy of:

- 2052 (1) the application, if any, made to the local authority¹²;
- 2053 (2) any relevant plans and particulars submitted to the local authority¹³;
- 2054 (3) any relevant record, consent, determination, notice or other notification issued by the local authority¹⁴;
- 2055 (4) all other relevant correspondence with the local authority¹⁵; and
- 2056 (5) a plan of the premises concerned (unless such a plan is included in the documents mentioned above)¹⁶.

If he thinks fit, the Secretary of State may require the appellant or the local authority to submit within a specified time a further written statement in respect of the matters to which the appeal relates¹⁷. If, after considering the grounds of appeal and any such further statement, the Secretary of State is satisfied that he is sufficiently informed to reach a decision he may decide the appeal without further investigation¹⁸; but otherwise he must cause a local inquiry to be held¹⁹. When he determines the appeal, the Secretary of State may allow or dismiss the appeal, or reverse or vary any part of any record, consent, determination or decision of the local authority to which the appeal relates, or may deal with any application, if any, made by the appellant to the local authority as if it had been made in the first instance to the Secretary of State²⁰. The Secretary of State may give the local authority in question such directions as he thinks fit for giving effect to his determination²¹.

At any time before the appeal is determined, the appellant may abandon it by giving written notice to the Secretary of State²². As soon as may be after he gives any such notice, the appellant must send a copy of it to the local authority²³.

1 As to the meaning of 'noise level register' see PARA 826.

2 Ie under the Control of Pollution Act 1974 s 64(3): see PARA 826.

3 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 See the Control of Pollution Act 1974 s 64(3); and PARA 826. As to appeals generally see PARA 821.

5 Ie under the Control of Pollution Act 1974 s 65: see PARAS 828, 830.

- 6 As to the meaning of 'noise' see PARA 819 note 1.
- 7 As to the measurement of noise levels see PARA 826 note 3.
- 8 As to the meaning of 'local authority' see PARA 99.
- 9 See the Control of Pollution Act 1974 s 65(4); and PARA 828.
- 10 See the Control of Pollution Act 1974 s 67(3); and PARA 834.
- 11 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, regs 8, 9(1). As to the power to make regulations see the Control of Pollution Act 1974 s 70(2), (3); and PARA 821.
- 12 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(1)(a).
- 13 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(1)(b).
- 14 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(1)(c).
- 15 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(1)(d).
- 16 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(1)(e). As to the meaning of 'premises' see PARA 824 note 5.
- 17 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(2).
- 18 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(2). In entertaining an appeal, the Secretary of State must have regard to any duty imposed by law on the appellant which concerns the activities in the course of which the noise is emitted: see the Control of Pollution Act 1974 s 70(4); and PARA 821.
- 19 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(2).
- 20 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(3).
- 21 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(3). See also the Control of Pollution Act 1974 s 64(4); and PARA 826.
- 22 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(4).
- 23 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 9(4).

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830. Contravention of the requirements of the noise level register.

If noise¹ emitted from any premises² exceeds the level of noise³ recorded in the noise level register⁴ in respect of any premises without the consent of the local authority⁵, or if a condition attached to a consent is contravened, the person responsible⁶ is guilty of an offence⁷. If satisfied that the offence is likely to continue or recur, the magistrates' court convicting a person of such an offence may make an order requiring the execution of any works necessary to prevent it continuing or recurring; and if that person without reasonable excuse contravenes any requirement of the order, he is guilty of a further offence⁸.

After giving the local authority in whose area the premises are situated an opportunity of being heard, the magistrates' court may direct the local authority to do anything which the court has power to require the person convicted to do, either instead of, or in addition to, imposing any requirement on that person⁹.

If an order is made requiring any person to execute any works¹⁰, and that person fails to execute all or any of the works in accordance with the order, the local authority may execute those works¹¹.

Where a local authority executes such works¹², it may recover from the person in default¹³ the expenditure incurred by it in executing the works, except such of the expenditure as that person shows was unnecessary in the circumstances¹⁴.

1 As to the meaning of 'noise' see PARA 819 note 1.

2 As to the meaning of 'premises' see PARA 824 note 5.

3 As to the measurement of noise levels see PARA 826 note 3.

4 As to the meaning of 'noise level register' see PARA 826.

5 As to consents see PARA 828. As to the meaning of 'local authority' see PARA 99.

6 As to the meaning of 'person responsible' see PARA 820.

7 Control of Pollution Act 1974 s 65(5). As to the penalty for such an offence see PARA 822.

8 Control of Pollution Act 1974 s 65(6). As to the penalty for such an offence see PARA 822.

9 Control of Pollution Act 1974 s 65(7).

10 Ie an order under the Control of Pollution Act 1974 s 65(6): see the text and note 8.

11 Control of Pollution Act 1974 s 69(1)(c), (2) (s 69(1)(c), (3) amended by the Environmental Protection Act 1990 Sch 16 Pt III).

12 Ie under the Control of Pollution Act 1974 s 65(7) or s 69.

13 'Person in default' means, in a case under the Control of Pollution Act 1974 s 65(7) (see the text and note 9), the person convicted of an offence under s 65(5) (see the text and note 7); and, in any other case, the person to whom the order applies: s 69(3) (as amended: see note 11).

14 Control of Pollution Act 1974 s 69(3) (as amended: see note 11). In proceedings to recover any amount due to a local authority in respect of works executed by it, it is not open to the person in default to raise any question which he could have raised on an appeal against the order: s 69(4). As to appeals see PARAS 821, 829.

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831. Noise reduction notice.

If it appears to the local authority¹: (1) that the level of noise² emanating from any premises³ to which a noise abatement order⁴ applies is not acceptable having regard to the purposes for which the order was made⁵; and (2) that a reduction in that level is practicable at reasonable cost and would afford a public benefit⁶, the authority may serve a notice (a 'noise reduction notice'⁷) on the person responsible⁸. The notice must require that person: (a) to reduce the level of noise emanating from the premises to such level as may be specified in the notice⁹; (b) to prevent any subsequent increase in the level of noise emanating from those premises without the consent of the local authority¹⁰; and (c) to take such steps as may be specified in the notice to achieve those purposes¹¹. The notice must specify a time, not being less than six months from the date of service of the notice, within which the noise level is to be reduced to the specified level and, where the notice specifies any steps necessary to achieve that purpose, a time within which those steps must be taken¹². The notice may specify particular times, or particular days, during which the noise level is to be reduced, and may require the noise level to be reduced to different levels for different times or days¹³. The local authority must record particulars of a noise reduction notice in the noise level register¹⁴.

A noise reduction notice takes effect whether or not a local authority consent¹⁵ authorises a level of noise higher than that specified in the notice¹⁶.

A person who is served with a noise reduction notice may, within three months of the date of service, appeal to a magistrates' court against the notice¹⁷.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'noise' see PARA 819 note 1. As to the measurement of noise levels see PARA 826 note 3.

3 As to the meaning of 'premises' see PARA 824 note 5.

4 As to the meaning of 'noise abatement order' see PARA 824.

5 Control of Pollution Act 1974 s 66(1)(a).

6 Control of Pollution Act 1974 s 66(1)(b).

7 See the Control of Pollution Act 1974 ss 66(3), 73(1).

8 Control of Pollution Act 1974 s 66(1). As to the meaning of 'person responsible' see PARA 820. As to the consequences of contravention of a noise reduction notice see PARA 834.

In relation to any premises which, after the coming into force of a noise abatement order, become premises to which the order applies as a result of the construction of a building or as a result of any works carried out on the premises but in respect of which no level of noise has been determined under s 67 (see PARA 827), the provisions in head (2) in the text do not apply: see s 67(5)(a).

9 Control of Pollution Act 1974 s 66(2)(a).

10 Control of Pollution Act 1974 s 66(2)(b).

11 Control of Pollution Act 1974 s 66(2)(c).

12 Control of Pollution Act 1974 s 66(3). In relation to any premises which, after the coming into force of a noise abatement order, become premises to which the order applies as a result of the construction of a building

or as a result of any works carried out on the premises but in respect of which no level of noise has been determined under s 67 (see PARA 827), the time specified must be not less than three months from the date of service of the notice: see s 67(5)(b); and PARA 827.

13 Control of Pollution Act 1974 s 66(4).

14 Control of Pollution Act 1974 s 66(6). As to the meaning of 'noise level register' see PARA 826.

15 le a consent under the Control of Pollution Act 1974 s 65: see PARA 828.

16 Control of Pollution Act 1974 s 66(5).

17 Control of Pollution Act 1974 s 66(7). As to appeals see PARAS 821, 832. As to the suspension of a notice pending an appeal see PARA 833.

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832. Appeals against noise reduction notices.

A person who is served with a noise reduction notice¹ may appeal to a magistrates' court against the notice².

The grounds on which a person served with such a notice may appeal may include any of the following grounds which are appropriate in the circumstances of the particular case³:

- 2057 (1) that the notice is not justified by the terms of the provisions relating to reduction of noise levels⁴;
- 2058 (2) that there has been some informality, defect or error in, or in connection with, the notice⁵;
- 2059 (3) that the local authority⁶ has refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary⁷;
- 2060 (4) that the time, or, where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose⁸;
- 2061 (5) where the noise to which the notice relates is noise caused in the course of a trade or business, that the best practicable means⁹ have been used for preventing, or for counteracting the effect of, the noise¹⁰;
- 2062 (6) that the notice should have been served on some person instead of the appellant, being the person responsible¹¹ for the noise¹²;
- 2063 (7) that the notice might lawfully have been served on some person in addition to the appellant, being a person also responsible for the noise, and that it would have been equitable for it to have been so served¹³.

On the hearing of the appeal¹⁴, the court may quash the notice to which the appeal relates¹⁵, or vary the notice in favour of the appellant in such manner as it thinks fit¹⁶, or dismiss the appeal¹⁷. A notice which is varied under these provisions is final and otherwise has effect as varied as if it had been so made by the local authority¹⁸. The court may make such order as it thinks fit with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work¹⁹, or as to the proportions in which any expenses which may become recoverable by the local authority²⁰ are to be borne by the appellant and any other person²¹.

1 As to the meaning of 'noise reduction notice' see PARA 831.

2 See the Control of Pollution Act 1974 s 66(7); and PARA 831. As to appeals generally see PARA 821. As to the suspension of a notice pending an appeal see PARA 833.

3 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, regs 3, 7(1), (2). As to the power to make regulations see PARA 821.

4 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(2)(a). As to the provisions relating to reduction of noise levels see the Control of Pollution Act 1974 s 66; and PARAS 831, 834.

5 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(2)(b). If and so far as an appeal is based on this ground, the court must dismiss the appeal if it is satisfied that the informality, defect or error was not a material one: reg 7(3). A notice will only be a nullity where it is hopelessly ambiguous or uncertain; and a notice

will only be invalid if there is evidence to support that conclusion: *Sovereign Rubber Ltd v Stockport Metropolitan Borough Council* [2000] Env LR 194, [2000] EHLR 154.

6 As to the meaning of 'local authority' see PARA 99.

7 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(2)(c).

8 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(2)(d).

9 As to the meaning of 'best practicable means' see PARA 823; definition applied by the Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 2.

10 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(2)(e). As to the meaning of 'noise' see PARA 819 note 1.

11 As to the meaning of 'person responsible' see PARA 820; definition applied by the Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 2.

12 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(2)(f).

13 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(2)(g). Where the grounds upon which an appeal is brought include this ground, the appellant must serve a copy of his notice of appeal on any other person referred to; and, in the case of any appeal against a noise reduction notice, he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question: reg 7(4). As to the meaning of 'premises' see PARA 824 note 5.

14 In entertaining an appeal, the magistrates' court must have regard to any duty imposed by law on the appellant which concerns the activities in the course of which the noise is emitted: see the Control of Pollution Act 1974 s 70(4); and PARA 821.

15 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(5)(a).

16 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(5)(b).

17 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(5)(c).

18 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(5).

19 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(6)(a).

20 Ie under the Control of Pollution Act 1974 Pt III (ss 57-74).

21 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 7(6)(b). In exercising these powers, the court must be satisfied, before it imposes any requirements on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of reg 7(4) (see note 13): reg 7(7).

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833. Suspension pending an appeal.

Where an appeal is brought against a noise reduction notice¹ and:

- 2064 (1) the noise² to which the notice relates is noise caused in the course of the performance of some duty imposed by law on the appellant³; or
 2065 (2) compliance with the notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal⁴,

the notice is suspended until the appeal has been abandoned or decided by the court⁵.

However, such a notice may not be suspended if:

- 2066 (a) in the opinion of the local authority⁶:

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159. (i) the noise to which the notice relates is injurious to health⁷, or is likely to be of a limited duration such that suspension would render the notice of no practical effect⁸; or

160. (ii) the expenditure which would be incurred by any person in the carrying out of works in compliance with the notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance⁹; and

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- 2067 (b) the notice includes a statement that it is to have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court¹⁰.

Save as provided by these provisions, a noise reduction notice may not be suspended by reason only of the bringing of an appeal¹¹.

1 As to such appeals see PARA 832. As to the meaning of 'noise reduction notice' see PARA 831.

2 As to the meaning of 'noise' see PARA 819 note 1.

3 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(1)(a). As to the power to make regulations see PARA 821.

4 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(1)(b).

5 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(1).

6 As to the meaning of 'local authority' see PARA 99.

7 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(2)(a)(i).

8 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(2)(a)(ii).

9 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(2)(b).

10 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(2).

11 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(3).

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834. Contravention of a noise reduction notice.

A person who without reasonable excuse contravenes a noise reduction notice¹ is guilty of an offence². In proceedings for such an offence in respect of noise³ caused in the course of a trade or business, it is a defence to prove that the best practicable means⁴ had been used for preventing, or for counteracting the effect of, the noise⁵.

If a noise reduction notice requires any person to execute works, and that person fails to execute all or any of the works in accordance with the notice, the local authority⁶ may execute the works⁷. Where the local authority executes such works, it may recover from the person in default⁸ the expenditure incurred by it in executing the works, except such of the expenditure as that person shows was unnecessary in the circumstances⁹.

1 As to the meaning of 'noise reduction notice' see PARA 831.

2 Control of Pollution Act 1974 s 66(8). As to the penalty for such an offence see PARA 822.

3 As to the meaning of 'noise' see PARA 819 note 1.

4 As to the meaning of 'best practicable means' see PARA 823. Cf the Environmental Protection Act 1990 ss 79(9), 80(7); and **NUISANCE** vol 78 (2010) PARAS 161, 204.

5 Control of Pollution Act 1974 s 66(9). This defence does not apply in relation to any premises which, after the coming into force of a noise abatement order, become premises to which the order applies as a result of the construction of a building or as a result of any works carried out on the premises but in respect of which no level of noise has been determined under s 67 (see PARA 827): see s 67(5)(c); and PARA 827. As to the meaning of 'premises' see para 824 note 5.

6 As to the meaning of 'local authority' see PARA 99.

7 Control of Pollution Act 1974 s 69(1)(b), (2).

8 'Person in default' means the person to whom the notice applies: see PARA 830 note 13.

9 Control of Pollution Act 1974 s 69(3) (amended by the Environmental Protection Act 1990 Sch 16 Pt III). In proceedings to recover any amount due to a local authority in respect of works executed by the local authority, it is not open to the person in default to raise any question which he could have raised on an appeal against the notice: Control of Pollution Act 1974 s 69(4). As to appeals see PARAS 821, 832.

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(4) CONSTRUCTION SITES

835. Noise on construction sites.

Noise from a construction site that is reasonably conducted is not a private nuisance, but may be a statutory nuisance¹. In addition, the Control of Pollution Act 1974 provides a special regime dealing with noise on construction sites.

Where it appears to a local authority² that construction works³ are being, or are going to be, carried out on any premises⁴, the local authority may serve a notice imposing requirements as to the way in which the works are to be carried out and may if it thinks fit publish notice of the requirements in such way as appears to the local authority to be appropriate⁵. The notice may, in particular:

- 2068 (1) specify the plant or machinery which is or is not to be used⁶;
- 2069 (2) specify the hours during which the work may be carried out⁷;
- 2070 (3) specify the level of noise which may be emitted from the premises in question or at any specified point on those premises or which may be so emitted during specified hours⁸; and
- 2071 (4) provide for any change of circumstances⁹.

The notice may specify the time within which it is to be complied with, and may require the execution of such works, and the taking of such other steps, as may be necessary for the purpose of the notice, or as may be specified in it¹⁰.

The notice must be served on the person who appears to the local authority to be carrying out, or going to carry out, the works, and on such other persons appearing to the local authority to be responsible¹¹ for, or to have control over, the carrying out of the works as the authority thinks fit¹².

A person served with a notice under these provisions may appeal against the notice to a magistrates' court within 21 days from the service of the notice¹³.

If a person on whom such a notice is served without reasonable excuse contravenes any requirement of the notice, he is guilty of an offence¹⁴. In any proceedings for such an offence, it is a defence to prove that the alleged contravention amounted to the carrying out of works in accordance with a prior consent¹⁵ for work on construction sites¹⁶.

1 *Andreae v Selfridge & Co Ltd* [1938] Ch 1, [1937] 3 All ER 255, CA; *Lloyds Bank plc v Guardian Assurance plc* (1986) 35 BLR 34, CA. As to statutory nuisances see **NUISANCE** vol 78 (2010) PARAS 115, 155 et seq, 199 et seq. As to the meaning of 'nuisance' see **NUISANCE** vol 78 (2010) PARA 159.

As to European Union legislation relating to noise from construction plant and equipment see PARA 53.

2 As to the meaning of 'local authority' see PARA 99.

3 I.e (1) the erection, construction, alteration, repair or maintenance of buildings, structures or roads; (2) breaking up, opening or boring under any road or adjacent land in connection with the construction, inspection, maintenance or removal of works; (3) demolition or dredging works; (4) any work of engineering construction, whether or not also comprised in head (1), (2) or (3) above: Control of Pollution Act 1974 s 60(1)(a)-(d). 'Work of engineering construction' means the construction, structural alteration, maintenance or repair of any railway

line or siding or any dock, harbour, inland navigation, tunnel, bridge, viaduct, waterworks, reservoir, pipeline, aqueduct, sewer, sewage works or gas-holder: s 73(1).

The works come to an end with practical completion, so that, if other works on the same site are commenced very shortly thereafter, a new notice will be required: *Walter Lilly & Co Ltd v Westminster City Council* [1994] Env LR 380, 158 JP 805, DC.

4 As to the meaning of 'premises' see PARA 824 note 5.

5 Control of Pollution Act 1974 s 60(2). The local authority does not need to have evidence of the contractual arrangements for the works; it is sufficient if certain matters appear to the local authority to fall within s 60: *Wiltshier Construction (London) Ltd v Westminster City Council* [1997] Env LR D6, DC.

In acting under the Control of Pollution Act 1974 s 60, the local authority must have regard: (1) to the relevant provisions of any code of practice issued under Pt III (ss 57-74) (see PARA 819) (s 60(4)(a)); (2) to the need for ensuring that the best practicable means are employed to minimise noise (s 60(4)(b)); (3) before specifying any particular methods or plant or machinery, to the desirability in the interests of any recipients of the notice of specifying other methods or plant or machinery which would be substantially as effective in minimising noise and more acceptable to them (s 60(4)(c)); and (4) to the need to protect any persons in the locality in which the premises in question are situated from the effects of noise (s 60(4)(d)). As to the meaning of 'best practicable means' see PARA 823. The phrase 'have regard' has no precise legal meaning: *Simpson v Edinburgh Corp'n* 1960 SC 313, 1961 SLT 17, Ct of Sess.

6 Control of Pollution Act 1974 s 60(3)(a).

7 Control of Pollution Act 1974 s 60(3)(b).

8 Control of Pollution Act 1974 s 60(3)(c).

9 Control of Pollution Act 1974 s 60(3)(d).

10 Control of Pollution Act 1974 s 60(6).

11 As to the meaning of 'person responsible' see PARA 820. The notice must identify the construction site without ambiguity; however, if the notice itself is ambiguous, a court may look at other evidence which resolves the ambiguity: *Wiltshier Construction (London) Ltd v Westminster City Council* [1997] Env LR D6, (27 November 1996) Lexis, DC (where the notice gave an incomplete address, but the covering letter gave the correct address). The notice must be served on the correct person, not a subsidiary or allied organisation: *AMEC Building Ltd v Camden London Borough Council* [1997] Env LR 330, (1996) 55 Con LR 82, DC (where it was held that there was no proper service where the notice was served on the secretary of a related company which shared the same registered address as the company that ought to have been served).

12 Control of Pollution Act 1974 s 60(5).

13 Control of Pollution Act 1974 s 60(7). As to appeals see PARAS 821, 836. As to suspension of a notice pending an appeal see PARA 837.

14 Control of Pollution Act 1974 s 60(8). As to the penalty for such an offence see PARA 822.

15 Is a consent under the Control of Pollution Act 1974 s 61: see PARA 838.

16 Control of Pollution Act 1974 s 61(8).

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836. Appeals against notices relating to construction sites.

A person served with a notice as to noise on a construction site¹ may appeal against the notice to a magistrates' court².

The grounds on which a person served with such a notice may appeal may include any of the following grounds which are appropriate in the circumstances of the particular case³:

- 2072 (1) that the notice is not justified by the terms of the provisions relating to control of noise on construction sites⁴;
- 2073 (2) that there has been some informality, defect or error in, or in connection with, the notice⁵;
- 2074 (3) that the local authority⁶ has refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary⁷;
- 2075 (4) that the time, or, where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose⁸;
- 2076 (5) that the notice should have been served on some person instead of the appellant, being a person who is carrying out, or going to carry out, the works, or is responsible⁹ for, or has control over, the carrying out of the works¹⁰;
- 2077 (6) that the notice might lawfully have been served on some person in addition to the appellant, being a person who is carrying out, or going to carry out, the works, or is responsible for, or has control over, the carrying out of the works, and that it would have been equitable for it to have been so served¹¹;
- 2078 (7) that the local authority has not had regard to some or all of the matters to which it is required to have regard¹².

On the hearing of the appeal¹³, the court may quash the notice to which the appeal relates¹⁴, or vary the notice in favour of the appellant in such manner as it thinks fit¹⁵, or dismiss the appeal¹⁶. A notice which is varied under these provisions is final and otherwise has effect as varied as if it had been so made by the local authority¹⁷.

1 le a notice under the Control of Pollution Act 1974 s 60: see PARA 835.

2 See the Control of Pollution Act 1974 s 60(7); and PARA 835. As to appeals generally see PARA 821. As to the suspension of a notice pending an appeal see PARA 837.

3 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, regs 3, 5(1), (2). As to the power to make regulations see PARA 821.

4 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(2)(a). As to the provisions relating to control of noise on construction sites see the Control of Pollution Act 1974 s 60; and PARA 835.

5 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(2)(b). If and so far as an appeal is based on this ground, the court must dismiss the appeal if it is satisfied that the informality, defect or error was not a material one: reg 5(3). A notice will only be a nullity where it is hopelessly ambiguous or uncertain; and a notice will only be invalid if there is evidence to support that conclusion: *Sovereign Rubber Ltd v Stockport Metropolitan Borough Council* [2000] Env LR 194, [2000] EHLR 154.

- 6 As to the meaning of 'local authority' see PARA 99.
- 7 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(2)(c).
- 8 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(2)(d).
- 9 As to the meaning of 'person responsible' see PARA 820; definition applied by the Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 2.
- 10 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(2)(e). Where the grounds upon which an appeal is brought include this ground or the ground specified in reg 5(2)(f) (see head (6) in the text), the appellant must serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question: reg 5(4). As to the meaning of 'premises' see PARA 824 note 5.
- 11 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(2)(f). See also note 10.
- 12 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(2)(g).
- 13 In entertaining an appeal, the magistrates' court must have regard to any duty imposed by law on the appellant which concerns the activities in the course of which the noise is emitted: see the Control of Pollution Act 1974 s 70(4); and PARA 821.
- 14 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(5)(a).
- 15 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(5)(b).
- 16 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(5)(c).
- 17 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 5(5).

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837. Suspension pending an appeal.

Where an appeal is brought against a notice relating to a construction site¹ and:

- 2079 (1) the noise² to which the notice relates is noise caused in the course of the performance of some duty imposed by law on the appellant³; or
 2080 (2) compliance with the notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal⁴,

the notice is suspended until the appeal has been abandoned or decided by the court⁵.

However, such a notice may not be suspended if:

- 2081 (a) in the opinion of the local authority⁶:
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 161. (i) the noise to which the notice relates is injurious to health⁷, or is likely to be of a limited duration such that suspension would render the notice of no practical effect⁸; or
 162. (ii) the expenditure which would be incurred by any person in the carrying out of works in compliance with the notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance⁹; and
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 2082 (b) the notice includes a statement that it is to have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court¹⁰.

Save as provided by these provisions, a notice relating to construction sites may not be suspended by reason only of the bringing of an appeal¹¹.

1 As to notices relating to construction sites see PARA 835. As to appeals against such notices see PARA 836.

2 As to the meaning of 'noise' see PARA 819 note 1.

3 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(1)(a). As to the power to make regulations see PARA 821.

4 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(1)(b).

5 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(1).

6 As to the meaning of 'local authority' see PARA 99.

7 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(2)(a)(i).

8 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(2)(a)(ii).

9 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(2)(b).

10 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(2).

11 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 10(3).

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838. Prior consent of work on construction sites.

A person who intends to carry out works to which the provisions relating to the control of noise on construction sites¹ apply may make application to the local authority² for a consent³. The application must contain particulars of: (1) the works and the method by which they are to be carried out⁴; and (2) the steps proposed to be taken to minimise noise resulting from the works⁵.

If the local authority considers that the application contains sufficient information for the purpose and that, if the works are carried out in accordance with the application, the authority would not serve a notice as to the control of noise on construction sites⁶ in respect of those works, it must give its consent to the application⁷. The local authority has power to: (a) attach conditions to a consent⁸; and (b) limit or qualify a consent to allow for any change in circumstances⁹; and (c) limit the duration of a consent¹⁰.

The local authority must inform the applicant of its decision on the application within 28 days from receipt of the application¹¹. If the local authority gives its consent to the application, it may if it thinks fit publish notice of the consent, and of the works to which it relates, in such way as appears to the local authority to be appropriate¹².

If the local authority: (i) does not give a consent site within the 28 day period¹³; or (ii) gives its consent within that period but attaches any condition to the consent or limits or qualifies the consent in any way¹⁴, the applicant may appeal to a magistrates' court within 21 days from the end of that period¹⁵.

Any person who knowingly carries out works, or permits works to be carried out, in contravention of any conditions attached to a consent is guilty of an offence¹⁶.

Where a consent has been given and the works are carried out by a person other than the applicant for the consent, it is the applicant's duty to take all reasonable steps to bring the consent to the notice of that other person¹⁷; and if the applicant fails to do so he is guilty of an offence¹⁸.

1 Ie the provisions of the Control of Pollution Act 1974 s 60: see PARA 835. As to the meaning of 'noise' see PARA 819 note 1.

2 As to the meaning of 'local authority' see PARA 99.

3 Control of Pollution Act 1974 s 61(1). Where approval under building regulations is required for the carrying out of the works, the application under s 61 must be made at the same time as, or later than, the request for the approval under building regulations: s 61(2) (amended by the Building Act 1984 Sch 7). As to building regulations see **BUILDING**.

4 Control of Pollution Act 1974 s 61(3)(a).

5 Control of Pollution Act 1974 s 61(3)(b).

6 Ie a notice under the Control of Pollution Act 1974 s 60: see PARA 835.

7 Control of Pollution Act 1974 s 61(4). The consent must contain a statement to the effect that the consent does not of itself constitute any ground of defence against any proceedings instituted under the Environmental Protection Act 1990 s 82 (see **NUISANCE** vol 78 (2010) PARAS 210-212): Control of Pollution Act 1974 s 61(9) (amended by the Environmental Protection Act 1990 Sch 15 para 15).

In acting under the Control of Pollution Act 1974 s 61, the authority must have regard to the considerations set out in s 60(4) (see PARA 835): s 61(5). The phrase 'have regard' has no precise legal meaning: *Simpson v Edinburgh Corpn* 1960 SC 313, 1961 SLT 17, Ct of Sess.

- 8 Control of Pollution Act 1974 s 61(5)(a).
- 9 Control of Pollution Act 1974 s 61(5)(b).
- 10 Control of Pollution Act 1974 s 61(5)(c).
- 11 Control of Pollution Act 1974 s 61(6).
- 12 Control of Pollution Act 1974 s 61(6).
- 13 Control of Pollution Act 1974 s 61(7)(a).
- 14 Control of Pollution Act 1974 s 61(7)(b).
- 15 Control of Pollution Act 1974 s 61(7). As to appeals see PARAS 821, 839.
- 16 Control of Pollution Act 1974 s 61(5). As to the penalty for such an offence see PARA 822.
- 17 Control of Pollution Act 1974 s 61(10).
- 18 Control of Pollution Act 1974 s 61(10). As to the penalty for such an offence see PARA 822.

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839. Appeals relating to prior consent for construction work.

A person who has applied for a prior consent for work on a construction site¹ may appeal to a magistrates' court against a local authority's² refusal or failure to give consent or against any conditions attached to a consent³.

The grounds on which a person to whom a local authority give a conditional consent⁴ may appeal may include any of the following grounds which are appropriate in the circumstances of the particular case⁵:

- 2083 (1) that any condition attached or imposed in relation to the consent (a 'relevant condition') is not justified by the terms of the provisions relating to prior consents⁶;
- 2084 (2) that there has been some informality, defect or error in, or in connection with, the consent⁷;
- 2085 (3) that the requirements of any relevant condition are unreasonable in character or extent, or are unnecessary⁸;
- 2086 (4) that the time, or where more than one time is specified, any of the times, within which the requirements of any relevant condition are to be complied with is not reasonably sufficient for the purpose⁹.

On the hearing of an appeal¹⁰ relating to a conditional consent, the court may vary the consent or any relevant condition in favour of the appellant in such manner as it thinks fit¹¹, or quash any relevant condition¹², or dismiss the appeal¹³. A consent or condition varied under these provisions is final and otherwise has effect as so varied, as if it had been given, attached or imposed in that form by the local authority¹⁴.

On the hearing of an appeal¹⁵ relating to a local authority's refusal or failure to give a consent within the specified period¹⁶, the court must afford to the appellant and to the authority an opportunity of making representations to it concerning the application for prior consent to which the appeal relates and concerning the terms and conditions of any consent which it considers to be appropriate¹⁷. The court must then either: (a) adjourn the appeal to enable the appellant to submit to the authority a new application¹⁸ relating to the matters which are the subject of the appeal¹⁹; or (b) make an order giving consent to the application either unconditionally or subject to such conditions as it thinks fit, having regard to the relevant provisions²⁰ and any other matters which appear to it to be relevant²¹.

1 le a consent under the Control of Pollution Act 1974 s 61: see PARA 838.

2 As to the meaning of 'local authority' see PARA 99.

3 See the Control of Pollution Act 1974 s 61(7); and PARA 838. The provisions of the Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6 apply to an appeal brought by any person under the Control of Pollution Act 1974 s 61(7) in relation to a conditional consent (see note 4) given by a local authority under s 61 or in relation to an authority's refusal or failure to give a consent within the specified 28 day period (see s 61(6); and PARA 838): Control of Noise (Appeals) Regulations 1975, SI 1975/2116, regs 3, 6(1). As to appeals generally, and the power to make regulations, see PARA 821.

4 'Conditional consent' means a consent given by a local authority under the Control of Pollution Act 1974 s 61 (see PARA 838) in respect of which the authority has attached any condition or imposed any limitation or qualification in pursuance of s 61(5)(a), (b) or (c) (see PARA 838); and 'conditions' includes any limitation or qualification so imposed: Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(2).

5 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(3).

6 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(3)(a). As to the provisions relating to prior consents see the Control of Pollution Act 1974 s 61; and PARA 838.

7 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(3)(b). If and so far as an appeal is based on this ground, the court must dismiss the appeal if it is satisfied that the informality, defect or error was not a material one: reg 6(4). A notice will only be a nullity where it is hopelessly ambiguous or uncertain; and a notice will only be invalid if there is evidence to support that conclusion: *Sovereign Rubber Ltd v Stockport Metropolitan Borough Council* [2000] Env LR 194, [2000] EHLR 154.

8 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(3)(c).

9 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(3)(d).

10 In entertaining an appeal, the magistrates' court must have regard to any duty imposed by law on the appellant which concerns the activities in the course of which the noise is emitted: see the Control of Pollution Act 1974 s 70(4); and PARA 821.

11 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(5)(a).

12 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(5)(b).

13 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(5)(c).

14 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(5).

15 See note 10.

16 Ie the 28-day period specified in the Control of Pollution Act 1974 s 61(6): see PARA 838.

17 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(6).

18 Ie under the Control of Pollution Act 1974 s 61(1): see PARA 838.

19 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(6)(a).

20 Ie the provisions of the Control of Pollution Act 1974 s 61(4), (5), (9): see PARA 838.

21 Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(6)(b). Any consent given by such an order is final and otherwise has effect for the purposes of the Control of Pollution Act 1974 Pt III (ss 57-74) as if it were a consent given by the local authority under s 61 (see PARA 838): Control of Noise (Appeals) Regulations 1975, SI 1975/2116, reg 6(6).

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(5) PLANT OR MACHINERY

840. Noise from plant or machinery.

Provision may be made by regulations¹:

- 2087 (1) for requiring the use on or in connection with any plant or machinery of devices or arrangements for reducing the noise² caused by the plant or machinery³;
- 2088 (2) for limiting the level of noise which may be caused by any plant or machinery when used for works to which the provisions relating to the control of noise on construction sites⁴ apply, or which may be caused outside a factory⁵ by the use of plant or machinery in the factory⁶.

The regulations may apply standards, specifications, descriptions or tests laid down in documents not forming part of the regulations⁷.

Before the Secretary of State⁸ makes such regulations, it is his duty to consult persons appearing to him to represent producers and users of plant and machinery with a view to ensuring that the regulations do not contain requirements which in his opinion would be impracticable or involve unreasonable expense⁹.

Any person who contravenes or causes or permits another person to contravene the regulations is guilty of an offence¹⁰. In any proceedings for a contravention of a regulation made in pursuance of head (1) above, it is a defence to prove that means were used for the purpose of reducing the noise in question which were not less effective for that purpose than the means required by the regulations¹¹.

1 Without prejudice to the generality of the Control of Pollution Act 1974 s 104(1)(a) (see PARA 61), different regulations may be made for different localities, and it is the duty of each local authority to enforce the provisions of regulations under s 68 within its area: s 68(4). Nothing in s 68 or regulations under it is to be construed as derogating from any other provision of Pt III (ss 57-74): s 68(5). At the date at which this volume states the law no such regulations had been made. As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'noise' see PARA 819 note 1.

3 Control of Pollution Act 1974 s 68(1)(a).

4 Ie the Control of Pollution Act 1974 s 60: see PARA 835.

5 Ie within the meaning of the Factories Act 1961: see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 318.

6 Control of Pollution Act 1974 s 68(1)(b).

7 Control of Pollution Act 1974 s 68(1).

8 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

9 Control of Pollution Act 1974 s 68(2).

10 Control of Pollution Act 1974 s 68(3). As to the penalty for such an offence see PARA 822.

11 Control of Pollution Act 1974 s 68(3).

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(6) LOUDSPEAKERS IN STREETS

841. Restrictions on loudspeakers in streets.

A loudspeaker in a street¹ must not be operated: (1) between the hours of nine in the evening and eight in the following morning, for any purpose²; (2) at any other time, for the purpose of advertising any entertainment, trade or business³. Any person who operates or permits the operation of a loudspeaker in contravention of these provisions is guilty of an offence⁴.

However, neither of these restrictions applies to the operation of a loudspeaker:

- 2089 (a) for police, fire and rescue authority or ambulance purposes, by the Environment Agency⁵, a water undertaker or a sewerage undertaker in the exercise of any of its functions, or by a local authority within its area⁶;
- 2090 (b) for communicating with persons on a vessel for the purpose of directing the movement of that or any other vessel⁷;
- 2091 (c) if the loudspeaker forms part of a public telephone system⁸;
- 2092 (d) if the loudspeaker: (i) is in or fixed to a vehicle⁹; and (ii) is operated solely for the entertainment of, or for communicating with, the driver or a passenger of the vehicle or, where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle, solely for giving warning to other traffic¹⁰; and (iii) is so operated as not to give reasonable cause for annoyance to persons in the vicinity¹¹;
- 2093 (e) otherwise than on a highway, by persons employed in connection with a transport undertaking used by the public, in a case where the loudspeaker is operated solely for making announcements to passengers or prospective passengers or to other persons so employed¹²;
- 2094 (f) by a travelling showman on land which is being used for the purposes of a pleasure fair¹³;
- 2095 (g) in case of emergency¹⁴;
- 2096 (h) operated in accordance with a loudspeaker consent granted by a local authority¹⁵.

Furthermore, the restriction in head (2) above does not apply to the operation of a loudspeaker between the hours of noon and seven in the evening on the same day if the loudspeaker:

- 2097 (A) is fixed to a vehicle being used for the conveyance of a perishable commodity for human consumption¹⁶; and
- 2098 (B) is operated solely for informing members of the public (otherwise than by the use of words) that the commodity is on sale from the vehicle¹⁷; and
- 2099 (c) is so operated as not to give reasonable cause for annoyance to persons in the vicinity¹⁸.

1 For the purposes of the Control of Pollution Act 1974 s 62, 'street' means a highway and any other road, footway, square or court which is for the time being open to the public: s 62(1) (amended by the Noise and Statutory Nuisance Act 1993 s 7). An open market, visited by a section of the public, is a 'square' and is 'open to the public': *Tower Hamlets London Borough Council v Creitzman* (1984) 83 LGR 72, 148 JP 590, DC. The outer face of a shop window with devices broadcasting music into the street has been held to be contrary to the

Control of Pollution Act 1974 s 62(1)(b): *Westminster City Council v French Connection Retail Ltd* [2005] EWHC 933 (Admin), 169 JP 321, [2005] All ER (D) 420 (Apr).

2 Control of Pollution Act 1974 s 62(1)(a). The Secretary of State may by order amend the times specified: s 62(1A) (s 62(1A), (1B) added by the Noise and Statutory Nuisance Act 1993 s 7). However, such an order may not amend the times so as to permit the operation of a loudspeaker in a street at any time between the hours of nine in the evening and eight in the following morning: Control of Pollution Act 1974 s 62(1B) (as so added). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Control of Pollution Act 1974 s 62(1)(b). See also note 1.

4 Control of Pollution Act 1974 s 62(1). As to the penalty for such an offence see PARA 822.

5 As to the Environment Agency see PARA 68 et seq.

6 Control of Pollution Act 1974 s 62(2)(a) (s 62(2) amended by the Noise and Statutory Nuisance Act 1993 s 7; and the Control of Pollution Act 1974 s 62(2)(a) amended by the Water Act 1989 Sch 25 para 48(7); the Environment Act 1995 Sch 22 para 28; and the Fire and Rescue Services Act 2004 Sch 1 para 45). As to the meaning of 'local authority' see PARA 99.

7 Control of Pollution Act 1974 s 62(2)(b).

8 Control of Pollution Act 1974 s 62(2)(c).

9 Control of Pollution Act 1974 s 62(2)(d)(i).

10 Control of Pollution Act 1974 s 62(2)(d)(ii).

11 Control of Pollution Act 1974 s 62(2)(d)(iii). On a prosecution, the court must be satisfied that the loudspeaker was likely to cause annoyance, but no evidence need be given that anyone was in fact annoyed: *Raymond v Cook* [1958] 3 All ER 407, [1958] 1 WLR 1098, DC (prosecution of ice-cream vendor under byelaw prohibiting the use of a moving instrument 'so as to cause annoyance to the inhabitants').

12 Control of Pollution Act 1974 s 62(2)(e).

13 Control of Pollution Act 1974 s 62(2)(f).

14 Control of Pollution Act 1974 s 62(2)(g).

15 Control of Pollution Act 1974 s 62(3A) (added by the Noise and Statutory Nuisance Act 1993 s 7). As to loudspeaker consents see PARA 842.

16 Control of Pollution Act 1974 s 62(3)(a).

17 Control of Pollution Act 1974 s 62(3)(b).

18 Control of Pollution Act 1974 s 62(3)(c).

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842. Loudspeaker consents.

A local authority¹ may resolve that provisions enabling a consent to be given in relation to the operation of a loudspeaker² are to apply to its area³. Under those provisions, on an application⁴ made by any person the local authority may consent to the operation in its area of a loudspeaker in contravention of the restrictions on loudspeakers in streets⁵. However, a consent may not be given to the operation of a loudspeaker in connection with any election or for the purpose of advertising any entertainment, trade or business⁶. A consent may be granted subject to such conditions as the local authority considers appropriate⁷.

Where an application is duly made to the local authority for a consent, the authority must determine the application and notify the applicant in writing of its decision within the period of 21 days beginning with the day on which the application is received by the authority⁸. In a case where a consent is granted, the notification must specify the conditions, if any, subject to which the consent is granted⁹.

Where the local authority grants a consent, the authority may cause a notice giving details of that consent to be published in a local newspaper circulating in the area¹⁰.

1 For these purposes, 'local authority' means, in relation to England and Wales, the council of a district, the council of a London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple: Noise and Statutory Nuisance Act 1993 s 8(5). As to the meaning of 'local authority' generally see PARA 99.

Any increase attributable to the Noise and Statutory Nuisance Act 1993 in the sums payable out of money provided by Parliament under any other enactment must be paid out of money provided by Parliament: s 11. This provision does not apply in so far as such a sum is payable by the National Assembly for Wales. As to the National Assembly for Wales and the Welsh Ministers see PARA 59; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

The Noise and Statutory Nuisance Act 1993 does not extend to Northern Ireland: see s 13(3).

2 I.e. the provisions of the Noise and Statutory Nuisance Act 1993 s 8, Sch 2: see the text and notes 4-10.

3 Noise and Statutory Nuisance Act 1993 s 8(1). If a local authority does so resolve, the provisions of Sch 2 are to come into force in its area on such date as may be specified for that purpose in the resolution, being a date at least one month after the date on which the resolution is passed: s 8(2).

Where a local authority has passed a resolution under these provisions, the authority must cause a notice to be published, in two consecutive weeks before Sch 2 comes into force in its area, in a local newspaper circulating in the area: s 8(3). The notice must state that the resolution has been passed; and set out the general effect of Sch 2 and, in particular, the procedure for applying for a consent under Sch 2: s 8(4).

4 An application for a consent must be made in writing and must contain such information as the local authority may reasonably require: Noise and Statutory Nuisance Act 1993 Sch 2 para 3. For the purposes of Sch 2, a 'consent' means a consent under Sch 2 para 1: Sch 2 para 7. An applicant for a consent must pay such reasonable fee in respect of his application as the local authority may determine: Sch 2 para 5.

5 Noise and Statutory Nuisance Act 1993 Sch 2 para 1(1) (amended by the Serious Organised Crime and Police Act 2005 s 137(6)). As to the restrictions on loudspeakers in streets see the Control of Pollution Act 1974 s 62(1) (see PARA 841); and the Serious Organised Crime and Police Act 2005 s 137(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 583).

6 Noise and Statutory Nuisance Act 1993 Sch 2 para 1(2).

7 Noise and Statutory Nuisance Act 1993 Sch 2 para 2.

8 Noise and Statutory Nuisance Act 1993 Sch 2 para 4(1).

9 Noise and Statutory Nuisance Act 1993 Sch 2 para 4(2).

10 Noise and Statutory Nuisance Act 1993 Sch 2 para 6.

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(7) AUDIBLE INTRUDER ALARMS

843. Introduction.

The Clean Neighbourhoods and Environment Act 2005¹ introduced new powers for local authorities to deal with the disturbance and annoyance caused by audible intruder alarms in their areas and includes provisions on designation of alarm notification areas², nominated key-holders³, fixed penalty notices⁴, and powers in relation to alarms⁵.

Provisions of the Noise and Statutory Nuisance Act 1993 relating to audible intruder alarms⁶ are repealed by the Clean Neighbourhoods and Environment Act 2005⁷.

1 Ie the Clean Neighbourhoods and Environment Act 2005 Pt 7 Ch 1 (ss 69-81).

2 See the Clean Neighbourhoods and Environment Act 2005 ss 69-70; and PARA 844.

3 See the Clean Neighbourhoods and Environment Act 2005 ss 71-72; and PARA 845.

4 See the Clean Neighbourhoods and Environment Act 2005 ss 73-76; and PARA 846.

5 See the Clean Neighbourhoods and Environment Act 2005 ss 77-79; and PARA 847.

6 Ie the provisions of the Noise and Statutory Nuisance Act 1993 s 9, Sch 3, which were never brought into force.

7 See the Clean Neighbourhoods and Environment Act 2005 s 107, Sch 5 Pt 7.

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844. Designation of alarm notification areas.

A local authority¹ may designate all or any part of its area as an alarm notification area².

If a local authority proposes to designate an area as an alarm notification area it must arrange for notice of the proposal to be published in a newspaper circulating in the area³. The notice must state: (1) that representations may be made to the authority about the proposal⁴; (2) that any such representations must be made before a specified date⁵. The local authority must consider any representations about the proposal which it receives before the specified date⁶.

If a local authority decides to designate an area as an alarm notification area it must: (a) arrange for notice of the decision to be published in a newspaper circulating in the area⁷; and (b) send a copy of the notice to the address of all premises⁸ in the area⁹. The notice must specify the date on which the designation is to have effect¹⁰. The date specified must be at least 28 days after the date on which the notice is published in accordance with head (a) above¹¹.

If a local authority decides not to designate an area as an alarm notification area it must arrange for notice of the decision to be published in a newspaper circulating in the area¹².

A local authority which has designated an area as an alarm notification area may withdraw the designation¹³. If a local authority decides to withdraw a designation of an area as an alarm notification area, it must: (i) arrange for notice of the decision to be published in a newspaper circulating in the area¹⁴; and (ii) send a copy of the notice to the address of all premises in the area¹⁵. The notice must specify the date on which the withdrawal of the designation is to have effect¹⁶.

1 'Local authority' means: (1) a district council in England; (2) a county council in England for an area for which there is no district council; (3) a London borough council; (4) the Common Council of the City of London; (5) the Council of the Isles of Scilly; (6) a county or county borough council in Wales: Clean Neighbourhoods and Environment Act 2005 s 81(1). As to the meaning of 'local authority' generally see PARA 99. See also **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; **LONDON GOVERNMENT**.

2 Clean Neighbourhoods and Environment Act 2005 s 69(1). 'Alarm notification area' means an area in respect of which a designation under s 69 has effect: s 81(1).

3 Clean Neighbourhoods and Environment Act 2005 s 69(2).

4 Clean Neighbourhoods and Environment Act 2005 s 69(3)(a).

5 Clean Neighbourhoods and Environment Act 2005 s 69(3)(b). The specified date must be at least 28 days after the date on which the notice is published in accordance with s 69(2) (see the text and note 3): s 69(4).

6 Clean Neighbourhoods and Environment Act 2005 s 69(5). As to the specified date see note 5.

7 Clean Neighbourhoods and Environment Act 2005 s 69(6)(a).

8 For these purposes, 'premises' does not include a vehicle: Clean Neighbourhoods and Environment Act 2005 s 81(1).

9 Clean Neighbourhoods and Environment Act 2005 s 69(6)(b).

10 Clean Neighbourhoods and Environment Act 2005 s 69(7).

11 Clean Neighbourhoods and Environment Act 2005 s 69(8).

- 12 Clean Neighbourhoods and Environment Act 2005 s 69(9).
- 13 Clean Neighbourhoods and Environment Act 2005 s 70(1).
- 14 Clean Neighbourhoods and Environment Act 2005 s 70(2)(a).
- 15 Clean Neighbourhoods and Environment Act 2005 s 70(2)(b).
- 16 Clean Neighbourhoods and Environment Act 2005 s 70(3).

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845. Nominated key-holders.

The provisions below¹ apply in relation to premises² if the premises are in an area designated by a local authority³ as an alarm notification area⁴, and an audible intruder alarm has been installed in or on the premises⁵.

The responsible person⁶ must: (1) nominate a key-holder in respect of the premises⁷; (2) notify the local authority in writing before the end of the required period⁸ of the name, address and telephone number of the key-holder so nominated in respect of the premises⁹. A person commits an offence if he fails to comply with this requirement¹⁰. The nomination mentioned in head (1) above must be made¹¹ before the end of the required period¹². A person may be nominated¹³ as a key-holder in respect of premises only if:

- 2100 (a) he holds keys sufficient to enable him to gain access to the part of the premises in which the controls for the alarm are situated¹⁴;
- 2101 (b) he normally resides or is situated in the vicinity of the premises¹⁵;
- 2102 (c) he has information sufficient to enable him to silence the alarm¹⁶;
- 2103 (d) he agrees to be a nominated key-holder in respect of the premises¹⁷;
- 2104 (e) where the premises are residential premises¹⁸, he is: (i) an individual who is not the occupier¹⁹ of the premises; or (ii) a key-holding company²⁰;
- 2105 (f) where the premises are non-residential premises²¹, he is: (i) an individual who is the responsible person, or who is acting on behalf of the responsible person (if the responsible person is not an individual); or (ii) a key-holding company²².

If the responsible person becomes aware that a person who has been nominated²³ as a key-holder in respect of premises no longer satisfies one or more of the above requirements²⁴, the responsible person must before the end of the required period²⁵ nominate another person as a key-holder in respect of the premises²⁶.

1 In the Clean Neighbourhoods and Environment Act 2005 ss 71, 72.

2 As to the meaning of 'premises' see PARA 844 note 8.

3 As to the meaning of 'local authority' for these purposes see PARA 844 note 1.

4 Clean Neighbourhoods and Environment Act 2005 s 71(1)(a). As to the meaning of 'alarm notification area' see PARA 844 note 2.

5 Clean Neighbourhoods and Environment Act 2005 s 71(1)(b).

6 'Responsible person', in respect of premises, means: (1) the occupier; or (2) if there is no occupier, the owner: Clean Neighbourhoods and Environment Act 2005 s 81(1). 'Occupier', in respect of premises, means (subject to s 81(2)): (a) a person occupying the premises; or (b) if the premises are unoccupied, a person entitled to occupy the premises (other than the owner): s 81(1). The fact that a person is occupying premises is to be disregarded for the purposes of Pt 7 Ch 1 (ss 69-81) if: (i) the premises comprise a building that is being erected, constructed, altered, improved, maintained, cleaned or repaired; (ii) the person is occupying the premises in connection with the erection, construction, alteration, improvement, maintenance, cleaning or repair; and (iii) the person is doing so by virtue of a licence granted for less than four weeks: s 81(2).

7 Clean Neighbourhoods and Environment Act 2005 s 71(2)(a). Nomination must be made in accordance with s 72: see the text and notes 11-26.

8 The required period for the purposes of the Clean Neighbourhoods and Environment Act 2005 s 71(2)(b) is the period before the end of which the key-holder is required to be nominated in accordance with s 72: s 71(3).

9 Clean Neighbourhoods and Environment Act 2005 s 71(2)(b).

10 Clean Neighbourhoods and Environment Act 2005 s 71(4). The requirement referred to in the text is the requirement under s 71(2): see the text and notes 6-9. A person guilty of an offence under s 71(4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 71(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

11 Ie in accordance with the Clean Neighbourhoods and Environment Act 2005 s 72.

12 Clean Neighbourhoods and Environment Act 2005 s 72(1). The required period for the purposes of s 72(1) is: (1) if the alarm was installed before the date on which the designation of the area had effect, the period of 28 days starting with that date; (2) if the alarm was installed on or after that date, the period of 28 days starting with the date on which the installation was completed: s 72(2).

13 Ie under the Clean Neighbourhoods and Environment Act 2005 s 72.

14 Clean Neighbourhoods and Environment Act 2005 s 72(3)(a).

15 Clean Neighbourhoods and Environment Act 2005 s 72(3)(b).

16 Clean Neighbourhoods and Environment Act 2005 s 72(3)(c).

17 Clean Neighbourhoods and Environment Act 2005 s 72(3)(d).

18 For these purposes, 'residential premises' means premises all or part of which comprise a dwelling: Clean Neighbourhoods and Environment Act 2005 s 72(8).

19 As to the meaning of 'occupier' see note 6.

20 Clean Neighbourhoods and Environment Act 2005 s 72(3)(e), (4). For these purposes, 'key-holding company' means a body corporate or an unincorporated association: (1) the business of which consists of or includes holding keys; and (2) which is capable of being contacted at any hour of the day: s 72(8).

21 For these purposes, 'non-residential premises' means premises which are not residential premises (see note 18): Clean Neighbourhoods and Environment Act 2005 s 72(8).

22 Clean Neighbourhoods and Environment Act 2005 s 72(3)(f), (5).

23 Ie under the Clean Neighbourhoods and Environment Act 2005 s 72.

24 Ie the requirements in the Clean Neighbourhoods and Environment Act 2005 s 72(3): see heads (a)-(f) in the text.

25 The required period for the purposes of the Clean Neighbourhoods and Environment Act 2005 s 72(6) is the period of 28 days starting with the date on which the responsible person becomes aware of that fact: s 72(7).

26 Clean Neighbourhoods and Environment Act 2005 s 72(6).

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846. Fixed penalty notices.

If it appears to an authorised officer¹ of a local authority² that a person has committed an offence relating to the nomination and notification of key-holders³ in the area of the local authority⁴, the officer may give the person a notice⁵ offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty⁶. If a person is given such a notice in respect of an offence: (1) no proceedings may be instituted for the offence before the end of the period of 14 days starting with the day after that on which the notice is given⁷; and (2) he may not be convicted of the offence if he pays the fixed penalty before the end of that period⁸.

A notice⁹ must state: (a) the period during which, by virtue of heads (1) and (2) above, proceedings will not be taken for the offence¹⁰; (b) the amount of the fixed penalty¹¹; and (c) the person to whom and the address at which the fixed penalty may be paid¹². Payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in head (c) above at the address so mentioned¹³.

In any proceedings a certificate which purports to be signed by or on behalf of the chief finance officer¹⁴ of a local authority and states that payment of a fixed penalty was or was not received by a date specified in the certificate, is evidence of the facts stated¹⁵.

The amount of the penalty payable to a local authority in pursuance of a fixed penalty notice¹⁶ is the amount specified by the local authority in relation to its area¹⁷ or, if no amount is so specified, £75¹⁸. The local authority may make provision for treating the penalty as having been paid if a lesser amount is paid before the end of a period specified by the authority¹⁹. The appropriate person may by regulations²⁰ make provision in connection with these powers conferred²¹ on local authorities²².

A local authority may use any sums it receives in respect of fixed penalties payable in pursuance of fixed penalty notices²³ (its 'penalty receipts') only for the purposes of its functions that are qualifying functions²⁴. A local authority must supply the appropriate person with such information relating to the use of its penalty receipts as the appropriate person may require²⁵.

The appropriate person may by regulations²⁶:

- 2106 (i) make provision for what a local authority is to do with its penalty receipts:
 - (A) pending their being used for the purposes of qualifying functions of the authority²⁷; (B) if they are not so used before such time after their receipt as may be specified by the regulations²⁸;
- 2107 (ii) make provision for accounting arrangements in respect of a local authority's penalty receipts²⁹.

If an authorised officer³⁰ of a local authority proposes to give a person a fixed penalty notice³¹, the officer may require the person to give him his name and address³². A person commits an offence if he fails to give his name and address when required to do so³³, or if he gives a false or inaccurate name or address in response to such a requirement³⁴.

1 For these purposes, 'authorised officer', in relation to a local authority, means: (1) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under the Clean

Neighbourhoods and Environment Act 2005 s 73; (2) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function; (3) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices: s 73(11).

2 As to the meaning of 'local authority' for these purposes see PARA 844 note 1.

3 Is an offence under the Clean Neighbourhoods and Environment Act 2005 s 71(4): see PARA 845.

4 Clean Neighbourhoods and Environment Act 2005 s 73(1).

5 A notice under the Clean Neighbourhoods and Environment Act 2005 s 73 must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence: s 73(4). The form of a notice under s 73 is to be such as the appropriate person may by order prescribe: s 73(10). At the date at which this volume states the law no such order had been made. 'Appropriate person' is: (1) in relation to a local authority in England, the Secretary of State (see PARA 58); (2) in relation to a local authority in Wales, the Welsh Ministers (see PARA 59): s 81(1).

A power conferred on the appropriate person under any provision of Pt 7 Ch 1 (ss 69-81) to make an order or regulations includes: (a) power to make different provision for different purposes (including different provision for different local authorities and descriptions of local authority); (b) power to make consequential, supplementary, incidental, transitional and saving provision: s 80(1), (2). The power is exercisable by statutory instrument: s 80(3). A statutory instrument containing an order or regulations made by the Secretary of State under any provision of Pt 7 Ch 1 is subject to annulment in pursuance of a resolution of either House of Parliament: s 80(4). See also notes 20, 24.

6 Clean Neighbourhoods and Environment Act 2005 s 73(2).

7 Clean Neighbourhoods and Environment Act 2005 s 73(3)(a).

8 Clean Neighbourhoods and Environment Act 2005 s 73(3)(b).

9 Is under the Clean Neighbourhoods and Environment Act 2005 s 73.

10 Clean Neighbourhoods and Environment Act 2005 s 73(5)(a).

11 Clean Neighbourhoods and Environment Act 2005 s 73(5)(b).

12 Clean Neighbourhoods and Environment Act 2005 s 73(5)(c).

13 Clean Neighbourhoods and Environment Act 2005 s 73(6). If a letter is sent in accordance with s 73(6), payment is to be regarded as having been made at the time at which the letter would be delivered in the ordinary course of post: s 73(7). Section 73(6) does not prevent payment of the fixed penalty being made by another method: s 73(8).

14 'Chief finance officer', in relation to a local authority, is the person having responsibility for the financial affairs of the authority: Clean Neighbourhoods and Environment Act 2005 s 73(11).

15 Clean Neighbourhoods and Environment Act 2005 s 73(9).

16 Is a notice under Clean Neighbourhoods and Environment Act 2005 s 73: see the text and notes 1-15.

17 Clean Neighbourhoods and Environment Act 2005 s 74(1), (2)(a).

18 Clean Neighbourhoods and Environment Act 2005 s 74(2)(b). The appropriate person (see note 5) may by order substitute a different amount for the amount for the time being specified in s 74(2)(b): s 74(6). At the date at which this volume states the law no such order has been made. As to the power to make orders see note 5.

19 Clean Neighbourhoods and Environment Act 2005 s 74(3).

20 Regulations under the Clean Neighbourhoods and Environment Act 2005 s 74(4) may, in particular: (1) require an amount specified under s 74(2)(a) (see the text and note 17) to fall within a range prescribed in the regulations; (2) restrict the extent to which, and the circumstances in which, an authority can make provision under s 74(3) (see the text and note 19): s 74(5). As to regulations made under s 74(4), (5) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175. See also the Environmental Offences (Use of Fixed Penalty Receipts) (Wales) Regulations 2007, SI 2007/739 (amended by SI 2008/663); and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663. As to the power to make regulations see note 5.

21 Ie conferred by the Clean Neighbourhoods and Environment Act 2005 s 74(2)(a) (see the text and note 17) and s 74(3) (see the text and note 19).

22 Clean Neighbourhoods and Environment Act 2005 s 74(4). See note 20.

23 Ie notices given under the Clean Neighbourhoods and Environment Act 2005 s 73: see the text and notes 1-15.

24 Clean Neighbourhoods and Environment Act 2005 s 75(1). The following are qualifying functions for the purposes of s 75: (1) functions under Pt 7 Ch 1 (ss 69-81); (2) functions under the Noise Act 1996 (see **PARA** 848 et seq); (3) functions under the Environmental Protection Act 1990 ss 79-82 (statutory nuisances) (see **NUISANCE** vol 78 (2010) **PARA** 156 et seq) in connection with statutory nuisances falling with s 79(1)(g) or s 79(1)(ga) (noise) (see **NUISANCE** vol 78 (2010) **PARA** 156 heads (9), (10)); (4) functions of a description specified in regulations made by the appropriate person (see note 5): Clean Neighbourhoods and Environment Act 2005 s 75(2). Regulations under s 75(2)(d) (see head (4) above) may (in particular) have the effect that a local authority may use its penalty receipts for the purposes of any of its functions: s 75(3). As to regulations made under s 75(2)(d), (3) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175. As to the power to make regulations see note 5.

25 Clean Neighbourhoods and Environment Act 2005 s 75(4).

26 Before making regulations under the Clean Neighbourhoods and Environment Act 2005 s 75, the appropriate person must consult: (1) the local authorities to which the regulations are to apply; and (2) such other persons as the appropriate person thinks fit: s 75(7). The powers to make regulations conferred by s 75 are, for the purposes of the Local Government Act 2003 s 100(1), to be regarded as included among the powers mentioned in s 100(2) (see **LOCAL GOVERNMENT** vol 69 (2009) **PARA** 789): Clean Neighbourhoods and Environment Act 2005 s 75(8). See also note 5.

27 Clean Neighbourhoods and Environment Act 2005 s 75(5)(a)(i). At the date at which this volume states the law no regulations had been made under s 75(5), (6).

28 Clean Neighbourhoods and Environment Act 2005 s 75(5)(a)(ii). The provision that may be made under s 75(5)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the appropriate person) other than the local authority: s 75(6). See note 27.

29 Clean Neighbourhoods and Environment Act 2005 s 75(5)(b). See note 27.

30 As to the meaning of 'authorised officer' see note 1; definition applied by the Clean Neighbourhoods and Environment Act 2005 s 76(4).

31 Ie a notice under the Clean Neighbourhoods and Environment Act 2005 s 73: see the text and notes 1-15.

32 Clean Neighbourhoods and Environment Act 2005 s 76(1).

33 Ie under the Clean Neighbourhoods and Environment Act 2005 s 76(1).

34 Clean Neighbourhoods and Environment Act 2005 s 76(2). A person guilty of an offence under s 76(2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) **PARA** 142.

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847. Powers in relation to alarms.

The following provisions¹ apply if an authorised officer² of a local authority³ is satisfied that the conditions below are met in relation to an audible intruder alarm installed in or on premises⁴ in the area of the local authority⁵. The conditions are:

- 2108 (1) that the alarm has been sounding continuously for more than 20 minutes or intermittently for more than one hour⁶;
- 2109 (2) that the sounding of the alarm is likely to give persons living or working in the vicinity of the premises reasonable cause for annoyance⁷;
- 2110 (3) if the premises are in an alarm notification area⁸, that reasonable steps have been taken to get the nominated key-holder⁹ to silence the alarm¹⁰.

In the above circumstances, the officer may enter the premises for the purpose of silencing the alarm¹¹. However, the officer may not enter premises by force¹²; and must, if required, show evidence of his authority to act under these provisions¹³.

If, on an application made by an authorised officer¹⁴ of a local authority, a justice of the peace is satisfied: (a) that the conditions in heads (1) and (2) above are met in relation to an audible intruder alarm installed in or on premises in the area of the local authority¹⁵; (b) if the premises are in an alarm notification area, that the condition in head (3) above is met¹⁶; and (c) that the officer is unable to gain entry to the premises without the use of force¹⁷, the justice of the peace may issue a warrant authorising the officer to enter the premises, using reasonable force if necessary, for the purpose of silencing the alarm¹⁸.

Before applying for such a warrant¹⁹, the officer must leave a notice at the premises stating: (i) that the officer is satisfied that the sounding of the alarm is likely to give persons living or working in the vicinity of the premises reasonable cause for annoyance²⁰; and (ii) that an application is to be made for a warrant authorising the officer to enter the premises, using reasonable force if necessary, for the purpose of silencing the alarm²¹. The officer must, if required, show evidence of such a warrant²².

Where an officer of a local authority enters any premises under these provisions²³, the officer may take any steps he thinks necessary for the purpose of silencing the alarm²⁴. He may take with him such other persons and such equipment as he thinks necessary for the purpose of silencing the alarm²⁵. The officer and any person who enters the premises with him²⁶ must not cause more damage to, or disturbance at, the premises than is necessary for the purpose of silencing the alarm²⁷. If the premises are unoccupied or (where the premises are occupied) the occupier of the premises is temporarily absent, the officer must: (A) leave a notice at the premises stating what action has been taken on the premises²⁸; (B) leave the premises (so far as is reasonably practicable) as effectively secured against entry as he found them²⁹.

Any expenses reasonably incurred by the local authority in connection with entering the premises, silencing the alarm and complying with heads (A) and (B) above may be recovered by the authority from the responsible person³⁰. A warrant³¹ continues in force until the alarm has been silenced, and the officer has complied with heads (A) and (B) above (if they apply)³². Nothing done by, or by a member of, a local authority or by an officer of or another person authorised by a local authority, if done in good faith³³, is to subject the authority or any of those persons personally to any action, liability, claim or demand³⁴.

- 1 le the Clean Neighbourhoods and Environment Act 2005 s 77: see the text and notes 2-13.
- 2 For these purposes, 'authorised officer' means an officer of a local authority who is authorised by the authority (generally or specifically) for the purposes of the Clean Neighbourhoods and Environment Act 2005 s 77: s 77(6). As to the meaning of 'local authority' for these purposes see PARA 844 note 1.
- 3 See note 2.
- 4 As to the meaning of 'premises' see PARA 844 note 8.
- 5 Clean Neighbourhoods and Environment Act 2005 s 77(1).
- 6 Clean Neighbourhoods and Environment Act 2005 s 77(2)(a).
- 7 Clean Neighbourhoods and Environment Act 2005 s 77(2)(b).
- 8 As to the meaning of 'alarm notification area' see PARA 844 note 2.
- 9 For these purposes, 'nominated key-holder', in respect of premises in the area of a local authority, means a person in respect of whom the authority has received notification in accordance with the Clean Neighbourhoods and Environment Act 2005 s 71(2)(b) (see PARA 845): s 77(6).
- 10 Clean Neighbourhoods and Environment Act 2005 s 77(2)(c).
- 11 Clean Neighbourhoods and Environment Act 2005 s 77(3).
- 12 Clean Neighbourhoods and Environment Act 2005 s 77(4).
- 13 Clean Neighbourhoods and Environment Act 2005 s 77(5).
- 14 As to the meaning of 'authorised officer' see note 2; definition applied by the Clean Neighbourhoods and Environment Act 2005 s 78(5).
- 15 Clean Neighbourhoods and Environment Act 2005 s 78(1)(a).
- 16 Clean Neighbourhoods and Environment Act 2005 s 78(1)(b).
- 17 Clean Neighbourhoods and Environment Act 2005 s 78(1)(c).
- 18 Clean Neighbourhoods and Environment Act 2005 s 78(2).
- 19 le under the Clean Neighbourhoods and Environment Act 2005 s 78.
- 20 Clean Neighbourhoods and Environment Act 2005 s 78(3)(a).
- 21 Clean Neighbourhoods and Environment Act 2005 s 78(3)(b).
- 22 Clean Neighbourhoods and Environment Act 2005 s 78(4).
- 23 Clean Neighbourhoods and Environment Act 2005 s 79(1). The text refers to entry under s 77 or under a warrant issued under s 78.
- 24 Clean Neighbourhoods and Environment Act 2005 s 79(2).
- 25 Clean Neighbourhoods and Environment Act 2005 s 79(3).
- 26 le by virtue of the Clean Neighbourhoods and Environment Act 2005 s 79(3).
- 27 Clean Neighbourhoods and Environment Act 2005 s 79(4).
- 28 Clean Neighbourhoods and Environment Act 2005 s 79(5)(a). The text refers to action under ss 77-79.
Any expenses reasonably incurred by the local authority in connection with entering the premises, silencing the alarm and complying with s 79(5) may be recovered by the authority from the responsible person: s 79(7). As to the meaning of the 'responsible person' see PARA 845 note 6.

29 Clean Neighbourhoods and Environment Act 2005 s 79(5)(b). However, the officer is not required by virtue of s 79(5)(b) to re-set the alarm: s 79(6). See also note 28.

30 Clean Neighbourhoods and Environment Act 2005 s 79(7).

31 Ie under the Clean Neighbourhoods and Environment Act 2005 s 78.

32 Clean Neighbourhoods and Environment Act 2005 s 79(8).

33 Ie for the purposes of the Clean Neighbourhoods and Environment Act 2005 ss 77-79.

34 Clean Neighbourhoods and Environment Act 2005 s 79(9).

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(8) NOISE FROM DWELLINGS AT NIGHT

848. Provisions relating to noise from dwellings at night.

The regime established by the Noise Act 1996¹ is intended to complement the statutory nuisance controls², providing a swifter remedy in the form of a summary procedure for dealing with the emission of noise from dwellings at night and powers of entry and seizure³.

The provisions introducing the summary procedure⁴ apply to the area of every local authority⁵ in England and Wales⁶.

1 As to the commencement and extent of the Noise Act 1996 see s 14.

2 See **NUISANCE**. As to statutory nuisances see **NUISANCE** vol 78 (2010) PARAS 115, 155 et seq, 199 et seq. As to the meaning of 'nuisance' see **NUISANCE** vol 78 (2010) PARA 159.

3 See Department of the Environment Circular 8/97 (dated 23 July 1997) para 5. As to entry and seizure see PARA 853.

There is to be paid out of money provided by Parliament any increase attributable to the Noise Act 1996 in the sums payable out of money so provided under any other enactment: s 13. This provision does not apply in so far as such a sum is payable by the National Assembly for Wales. As to the National Assembly for Wales and the Welsh Ministers see PARA 59; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

4 Ie the Noise Act 1996 ss 2-9: see PARA 849 et seq.

5 As to the meaning of 'local authority' see PARA 99.

6 Noise Act 1996 s 1 (substituted by the Anti-social Behaviour Act 2003 s 42(1), (2)).

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849. Investigation of noise from a dwelling and warnings.

A local authority¹ in England and Wales may, if it receives a complaint made by any individual present in a dwelling² during night hours³ (the 'complainant's dwelling') that excessive noise is being emitted from another dwelling⁴ (the 'offending dwelling') or any premises in respect of which a premises licence or a temporary event notice has effect (the 'offending premises')⁵, arrange for an officer of the authority to take reasonable steps to investigate the complaint⁶. A complaint may be made by any means⁷.

If, in consequence of such an investigation, an officer of the authority is satisfied that noise is being emitted from the offending dwelling or the offending premises during night hours and that the noise, if it were measured from within the complainant's dwelling, would or might exceed the permitted level⁸, the officer may serve a warning notice⁹ about the noise¹⁰.

A warning notice must:

- 2111 (1) state that an officer of the authority considers that noise is being emitted from the offending dwelling or the offending premises during night hours¹¹;
- 2112 (2) state that the noise exceeds, or may exceed, the permitted level, as measured from within the complainant's dwelling¹²;
- 2113 (3) give warning (a) in a case where the complaint is in respect of a dwelling, that any person who is responsible for noise which is emitted from the offending dwelling¹³ in the period specified in the notice¹⁴ and exceeds the permitted level, as measured from within the complainant's dwelling, may be guilty of an offence; (b) in the case where the complaint is in respect of other premises, that the responsible person in relation to the offending premises may be guilty of an offence if noise which exceeds the permitted level, as measured from within the complainant's dwelling, is emitted from the premises in the period specified in the notice¹⁵; and
- 2114 (4) state the time at which the notice is served¹⁶.

In a case where the complaint is in respect of a dwelling, a warning notice must be served: (i) by delivering it to any person present at or near the offending dwelling and appearing to the officer of the authority to be responsible for the noise¹⁷; or (ii) if it is not reasonably practicable to identify any person at or near the dwelling as being a person responsible for the noise on whom the notice may reasonably be served, by leaving it at the offending dwelling¹⁸. In a case where the complaint is in respect of other premises, a warning notice must be served by delivering it to the person who appears to the officer of the authority to be the responsible person in relation to the offending premises at the time the notice is delivered¹⁹.

1 As to the meaning of 'local authority' see PARA 99.

2 'Dwelling' means any building or part of a building used or intended to be used as a dwelling: Noise Act 1996 s 11(2)(a).

3 'Night hours' means the period beginning with 11 pm and ending with the following 7 am: Noise Act 1996 s 2(6).

4 References to noise emitted from a dwelling include noise emitted from any garden, yard, outhouse or other appurtenance belonging to or enjoyed with the dwelling: Noise Act 1996 s 11(2)(b).

5 Noise Act 1996 s 2(2) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 3(1), (2)). 'Premises licence' and 'temporary event notice' have the same meanings as in the Licensing Act 2003 (see **LICENSING AND GAMBLING** vol 67 (2008) PARAS 53, 108): see the Noise Act 1996 s 2(7A) (added by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 3(1), (5)).

6 Noise Act 1996 s 2(1) (substituted by the Anti-social Behaviour Act 2003 s 42(1), (3)). Certain functions under the Noise Act 1996 s 2 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Where a local authority receives a complaint under the Noise Act 1996 s 2(2) and the offending dwelling is or the offending premises are within the area of another local authority, the first local authority may act under ss 2-9 as if the offending dwelling or the offending premises were within its area: s 2(7) (amended by the Anti-social Behaviour Act 2003 s 42(1), (4), Sch 3; and the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 3(1), (4)).

7 Noise Act 1996 s 2(3).

8 For these purposes, the appropriate person may by directions in writing determine the maximum level of noise (the 'permitted level') which may be emitted during night hours from any dwelling or other premises: Noise Act 1996 s 5(1) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 7(1), (2)). The permitted level is to be a level applicable to noise as measured from within any other dwelling in the vicinity by an approved device used in accordance with any conditions subject to which the approval was given: Noise Act 1996 s 5(2). Different permitted levels may be determined for different circumstances, and the permitted level may be determined partly by reference to other levels of noise: s 5(3). The appropriate person may from time to time vary his directions by further directions in writing: s 5(4) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 7(1), (3)).

The appropriate person may approve in writing any type of device used for the measurement of noise; and references to approved devices are references to devices of a type so approved: Noise Act 1996 s 6(1) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 8(1), (2)). Any such approval may be given subject to conditions as to the purposes for which, and the manner and other circumstances in which, devices of the type concerned are to be used: Noise Act 1996 s 6(2).

'Appropriate person' means: (1) the Secretary of State (see PARA 58), in relation to England; (2) the Welsh Ministers (see PARA 59), in relation to Wales: Noise Act 1996 s 11(2A) (added by the Clean Neighbourhoods and Environment Act 2005 s 85(1), (2)).

9 A 'warning notice' is a notice under the Noise Act 1996 s 3: s 3(1). There is no prescribed form of warning notice, although a suggested form has been prepared by the Chartered Institute of Environmental Health.

10 Noise Act 1996 s 2(4) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 3(1), (3)).

It is for the officer of the authority dealing with the particular case: (1) to decide whether any noise, if it were measured from within the complainant's dwelling, would or might exceed the permitted level; and (2) for the purposes of that decision, to decide whether to assess the noise from within or outside the complainant's dwelling and whether or not to use any device for measuring the noise: Noise Act 1996 s 2(5).

11 Noise Act 1996 s 3(1)(a)(i) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 4(1), (2)(a)).

12 Noise Act 1996 s 3(1)(a)(ii).

13 A person is responsible for noise emitted from a dwelling if he is a person to whose act, default or sufferance the emission of the noise is wholly or partly attributable: Noise Act 1996 s 3(5).

14 The period specified in a warning notice must be a period beginning not earlier than 10 minutes after the time when the notice is served and ending with the following 7 am: Noise Act 1996 s 3(2).

15 Noise Act 1996 s 3(1)(b) (substituted by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 4(1), (2)(b)). As to offences see PARA 850; and as to penalties see PARA 852.

16 Noise Act 1996 s 3(4).

17 Noise Act 1996 s 3(3)(a) (s 3(3) amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 4(1), (3)).

18 Noise Act 1996 s 3(3)(b). See note 17.

19 Noise Act 1996 s 3(3A) (s 3(3A), (6) added by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 4(1), (4), (5)). For the purposes of the Noise Act 1996 ss 2-9, the responsible person in relation to premises at a particular time is (1) where a premises licence has effect in respect of the premises (a) the person who holds the premises licence if he is present at the premises at that time; (b) where that person is not present at the premises at that time, the designated premises supervisor under the licence if he is present at the premises at that time; or (c) where neither of the persons mentioned in heads (a) and (b) above is present at the premises at that time, any other person present at the premises at that time who is in charge of the premises; (2) where a temporary event notice has effect in respect of the premises (a) the premises user in relation to that notice if he is present at the premises at that time; or (b) where the premises user is not present at the premises at that time, any other person present at the premises at that time who is in charge of the premises: s 3(6) (as so added).

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850. Offences.

If a warning notice has been served¹ in respect of noise emitted from a dwelling², any person who is responsible³ for noise which: (1) is emitted from the dwelling in the period specified in the notice⁴; and (2) exceeds the permitted level⁵, as measured from within the complainant's dwelling⁶, is guilty of an offence⁷. It is a defence for a person charged with such an offence to show that there was a reasonable excuse for the act, default or sufferance in question⁸.

If (a) a warning notice has been served⁹ in respect of noise emitted from premises¹⁰; (b) noise is emitted from the premises in the period specified in the notice¹¹; and (c) the noise exceeds the permitted level, as measured from within the complainant's dwelling¹², the responsible person in relation to the offending premises¹³ at the time at which the noise referred to in head (c) above is emitted is guilty of an offence¹⁴.

¹ As to the service of warning notices see PARA 849. As to the meaning of 'warning notice' see PARA 849 note 9.

² As to the meaning of 'dwelling' see PARA 849 note 2.

³ See PARA 849 note 13. The person responsible need not be the same person as was served with the warning notice: Department of the Environment Circular 8/97 (dated 23 July 1997) para 30.

⁴ Noise Act 1996 s 4(1)(a). As to the period specified see PARA 849 note 14.

⁵ As to the meaning of 'permitted level' see PARA 849 note 8.

⁶ Noise Act 1996 s 4(1)(b). As to the meaning of 'complainant's dwelling' see PARA 849.

⁷ Noise Act 1996 s 4(1). As to penalties see s 4(3); and PARA 852.

⁸ Noise Act 1996 s 4(2).

⁹ Ie served under the Noise Act 1996 s 3: see PARA 849.

¹⁰ Noise Act 1996 s 4A(1)(a) (s 4A added by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 6).

¹¹ Noise Act 1996 s 4A(1)(b) (as added: see note 10).

¹² Noise Act 1996 s 4A(1)(c) (as added: see note 10).

¹³ See PARA 849 note 19.

¹⁴ Noise Act 1996 s 4A(1). As to penalties see s 4A(2); and PARA 852.

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851. Evidence.

In proceedings for an offence¹, evidence of a measurement of noise made by a device is not admissible as evidence of the level of noise unless it is an approved device² and any conditions subject to which the approval was given are satisfied³. Evidence of a measurement of noise made by a device or of the circumstances in which it was made, or evidence that a device was of an approved type or that any conditions subject to which the approval was given were satisfied, may be given by the production of a document which is signed by an officer of the local authority⁴ and which (as the case may be) gives particulars of the measurement or of the circumstances in which it was made or states that the device was of such a type or that, to the best of the knowledge and belief of the person making the statement, all such conditions were satisfied⁵. If the document contains evidence of a measurement of noise it may consist partly of a record of the measurement produced automatically by a device⁶.

In proceedings for an offence⁷, evidence that noise, or noise of any kind, measured by a device at any time was noise emitted from a dwelling⁸ or from any other premises may be given by the production of a document signed by an officer of the local authority⁹ and stating that he had identified that dwelling or those premises as the source at that time of the noise or, as the case maybe, the noise of that kind¹⁰.

These provisions do not make a document admissible as evidence in proceedings for an offence unless a copy of it has, not less than seven days before the hearing or trial, been served on the person charged with the offence¹¹. A document is not admissible as evidence of anything other than the matters shown on a record produced automatically by a device if, not less than three days before the hearing or trial or within such further time as the court may in special circumstances allow, the person charged with the offence serves a notice on the prosecutor requiring attendance at the hearing or trial of the person who signed the document¹².

1 le an offence under the Noise Act 1996 s 4 or s 4A: see PARA 850.

2 See PARA 849 note 8.

3 Noise Act 1996 s 6(3) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 8(1), (3)).

4 For these purposes, a document purporting to be signed as mentioned in the Noise Act 1996 s 7(2), s 7(3)(a) or s 7(3A)(a) (see the text and note 9) is to be treated as being so signed unless the contrary is proved: s 7(4) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 9(1), (4)). As to the meaning of 'local authority' see PARA 99.

5 Noise Act 1996 s 7(1), (2) (s 7(1) amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 9(1), (2)).

6 Noise Act 1996 s 7(2).

7 See note 1.

8 See PARA 849 notes 4, 8. As to the meaning of 'dwelling' see PARA 849 note 2.

9 Noise Act 1996 ss 7(3)(a), 7(3A)(a) (s 7(3A) added by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 9(1), (3)).

- 10 Noise Act 1996 ss 7(3)(b), 7(3A)(b) (s 7(3A) as added: see note 9).
- 11 Noise Act 1996 s 7(5).
- 12 Noise Act 1996 s 7(6).

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852. Penalties.

A person found guilty of an offence where noise from a dwelling or other premises exceeds the permitted level after the service of a warning notice¹ is liable on summary conviction to a penalty².

Where an officer of a local authority³ who is authorised for these purposes has reason to believe that a person is committing or has just committed an offence⁴, he may give that person a notice (a 'fixed penalty notice') offering him the opportunity of discharging any liability to conviction for that offence by the payment of a fixed penalty⁵. The fixed penalty notice must⁶:

- 2115 (1) give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence⁷;
- 2116 (2) state the period during which proceedings will not be taken⁸ for the offence⁹;
- 2117 (3) state the amount of the fixed penalty¹⁰; and
- 2118 (4) state the person to whom and the address at which the fixed penalty may be paid¹¹.

Where a person is given a fixed penalty notice in respect of an offence: (a) proceedings for that offence may not be instituted before the end of the period of 14 days following the date of the notice¹²; (b) he cannot be convicted of that offence if he pays the penalty before the end of that period¹³; (c) no further fixed penalty notice may be given to that person in respect of noise emitted from the dwelling¹⁴ or from the premises during the period specified in the warning notice¹⁵.

1 le an offence under the Noise Act 1996 s 4 or s 4A: see PARA 850.

2 Noise Act 1996 ss 4(3), s 4A(2) (s 4A added by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 6). The penalty in the case of an offence under the Noise Act 1996 s 4 is a fine not exceeding level 3 on the standard scale, and in the case of an offence under s 4A the penalty is a fine not exceeding level 5 on the standard scale: see s 4(3); and s 4A(2) (as so added) respectively. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. See also the London Local Authorities Act 2007 s 31(1), Sch 2 Pt 1 (modification of enactments in enforcement action zone).

3 As to the meaning of 'local authority' see PARA 99.

4 See note 1.

5 Noise Act 1996 s 8(1) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 10(1), (2)). Certain functions under the Noise Act 1996 s 8 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

A fixed penalty notice may be given to a person by delivering the notice to him or, if it is not reasonably practicable to deliver it to him, by leaving the notice addressed to him at the offending dwelling or the offending premises: Noise Act 1996 s 8(2) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 10(1), (3)). As to the meanings of 'offending dwelling' and 'offending premises' see PARA 849.

In relation to a fixed penalty payable to a local authority in pursuance of a notice under the Noise Act 1996 s 8: (1)(a) in the case of an offence under s 4 (see PARA 850) the amount of the penalty is the amount specified by the local authority in relation to the authority's area; or (b) if no amount is so specified, is £100; and (2) in the case of an offence under s 4A (see PARA 850) the amount is £500: s 8A(1), (2), (2A) (ss 8A, 8B added by the Clean Neighbourhoods and Environment Act 2005 s 82(2); and the Noise Act 1996 s 8A(2) amended and s

8A(2A) added by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 11(1)-(3)). The local authority may make provision for treating the fixed penalty payable in the case of an offence under the Noise Act 1996 s 4 as having been paid if a lesser amount is paid before the end of a period specified by the authority: Noise Act 1996 s 8A(3) (as so added; and amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 11(1), (4)). The appropriate person may by regulations make provision in connection with the powers conferred on local authorities under the Noise Act 1996 s 8A(2)(a) (see head (1)(a) above) and s 8A(3) (see above): s 8A(4) (as so added). Regulations under s 8A(4) may, in particular: (i) require an amount specified under head (1) above to fall within a range prescribed in the regulations; (ii) restrict the extent to which, and the circumstances in which, a local authority can make provision under s 8A(3): s 8A(5) (as so added). The appropriate person may by order substitute a different amount for the amount for the time being specified in head (1)(b) or head (2) above: s 8A(6) (as so added; and amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 11(1), (5)). As to the meaning of 'appropriate person' see PARA 849 note 8.

The power to make an order or regulations under the Noise Act 1996 is exercisable by statutory instrument which (except in the case of an order under s 14 (see PARA 848 note 1) or an order or regulations made solely by the National Assembly for Wales) is subject to annulment in pursuance of a resolution of either House of Parliament: s 11(3) (amended by the Anti-social Behaviour Act 2003 s 42(1), (6); and the Clean Neighbourhoods and Environment Act 2005 s 85(1), (3)). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

As to the regulations that have been made under the Noise Act 1996 s 8A(4), (5) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175. See also the Environmental Offences (Use of Fixed Penalty Receipts) (Wales) Regulations 2007, SI 2007/739 (amended by SI 2008/663); and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663. At the date at which this volume states the law no order had been made under the Noise Act 1996 s 8A(6).

If an officer of a local authority who is authorised for the purposes of s 8 proposes to give a person a fixed penalty notice, the officer may require the person to give him his name and address: s 8B(1) (as so added). A person commits an offence if: (A) he fails to give his name and address when required to do so under s 8B(1); or (B) he gives a false or inaccurate name or address in response to a requirement under s 8B(1): s 8B(2) (as so added). A person guilty of an offence under s 8B(2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 8B(3) (as so added).

6 If a form for a fixed penalty notice is specified in an order made by the appropriate person, a fixed penalty notice must be in that form: Noise Act 1996 s 9(1) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 12(1), (2)).

7 Noise Act 1996 s 8(4).

8 Ie because of the Noise Act 1996 s 8(3)(a): see the text and note 12.

9 Noise Act 1996 s 8(5)(a).

10 Noise Act 1996 s 8(5)(b). As to the amount see note 5.

11 Noise Act 1996 s 8(5)(c). Payment of the fixed penalty may (among other methods) be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise): s 8(6). Where a letter containing the amount of the penalty is sent in accordance with s 8(6), payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post: s 8(7).

A local authority may use any sums it receives under s 8 (its 'penalty receipts') only for the purposes of functions that are qualifying functions, namely: (1) its functions under the Noise Act 1996; (2) its functions under the Clean Neighbourhoods and Environment Act 2005 Pt 7 Ch 1 (ss 69-81) (see PARA 843 et seq); (3) its functions under the Environmental Protection Act 1990 ss 79-82 (see **NUISANCE** vol 78 (2010) PARA 156 et seq) in connection with statutory nuisances falling with s 79(1)(g) or s 79(1)(ga) (see **NUISANCE** vol 78 (2010) PARA 156 heads (9), (10)); or (4) its functions of a description specified in regulations made by the appropriate person, which regulations may, in particular, have the effect that a local authority may use its penalty receipts for the purposes of any of its functions: Noise Act 1996 Act s 9(4), (4A), (4B) (s 9(4) substituted, and s 9(4A)-(4F) added, by the Anti-social Behaviour Act 2003 s 42(1), (5); and the Noise Act 1996 s 9(4A), (4C)-(4F) amended by the Clean Neighbourhoods and Environment Act 2005 s 83(1), (2), Sch 1 paras 1, 12(1), (4)-(6), Sch 5 Pt 7). A local authority must supply the appropriate person with such information relating to the use of its penalty receipts as the appropriate person may require: Noise Act 1996 s 9(4C) (as so added and amended). The appropriate person may by regulations: (a) make provision for what a local authority is to do with its penalty receipts: (i) pending their being used for the purposes of qualifying functions of the authority; (ii) if they are not so used before such time after their receipt as may be specified by the regulations (including, in particular, provision for the payment of sums to a person, including the appropriate person, other than the local authority); (b) make provision for accounting arrangements in respect of a local authority's penalty receipts: s 9(4D), (4E)

(as so added and amended). Before making regulations under s 9, the appropriate person must consult the local authorities to which the regulations are to apply, and such other persons as the appropriate person considers appropriate: s 9(4F) (as so added and amended). The powers to make regulations conferred by s 9 are, for the purposes of the Local Government Act 2003 s 100(1) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 789), to be regarded as included among the powers mentioned in s 100(2): Noise Act 1996 s 9(4G) (s 9(4G), (4H) added by the Clean Neighbourhoods and Environment Act 2005 s 83(3)). Regulations under the Noise Act 1996 s 9 relating to local authorities in England may make provision in relation to all local authorities, particular local authorities or particular descriptions of local authority, and may make different provision in relation to different local authorities or descriptions of local authority: s 9(4H) (as so added). As to the regulations that have been made under s 9(4A)(b), (4B) see the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175.

12 Noise Act 1996 s 8(3)(a).

13 Noise Act 1996 s 8(3)(b). In proceedings for an offence under s 4 or s 4A (see PARA 850), evidence that payment of a fixed penalty was or was not made before the end of any period may be given by the production of a certificate which purports to be signed by or on behalf of the person having responsibility for the financial affairs of the local authority and which states that payment of a fixed penalty was made on any date or, as the case may be, was not received before the end of that period: s 9(5) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 12(1), (7)).

14 See PARA 849 note 4. As to the meaning of 'dwelling' see PARA 849 note 2.

15 See the Noise Act 1996 ss 9(2)(a), 9(2A)(b) (s 9(2A) added by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 12(1), (3)). As to the meaning of 'warning notice' see PARA 849 note 9. As to the period specified see PARA 849 note 14.

The person to whom a fixed penalty notice is given may, however, be convicted of a further offence under the Noise Act 1996 s 4 or s 4A (see PARA 850) in respect of noise emitted from the dwelling or from the premises after the fixed penalty notice is given and before the end of the specified period: see ss 9(2)(b), 9(2A)(b) (as so added).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/15. NOISE CONTROL/(8) NOISE FROM DWELLINGS AT NIGHT/853. Entry and seizure.

853. Entry and seizure.

Where an officer of a local authority¹ has reason to believe that a warning notice has been served² in respect of noise emitted from a dwelling or other premises³ and that, at any time in the period specified⁴ in the notice, noise emitted from that dwelling or other premises has exceeded the permitted level⁵, as measured from within the complainant's dwelling⁶, an officer of the local authority or a person authorised by the authority for the purpose may enter the dwelling or other premises from which the noise in question is being or has been emitted and may seize and remove any equipment which it appears to him is being or has been used in the emission of the noise⁷.

If it is shown to a justice of the peace on sworn information in writing that:

- 2119 (1) a warning notice has been served in respect of noise emitted from a dwelling or other premises⁸;
- 2120 (2) at any time in the period specified in the notice, noise emitted from the dwelling or other premises has exceeded the permitted level, as measured from within the complainant's dwelling⁹; and
- 2121 (3) entry of an officer of the local authority, or of a person authorised by the authority for the purpose, to the dwelling or other premises has been refused, or such a refusal is apprehended, or a request by an officer of the authority, or of such a person, for admission would defeat the object of entry¹⁰,

then the justice may by warrant under his hand authorise the local authority, by any of its officers or any person authorised by it for the purpose, to enter the dwelling or other premises, if need be by force¹¹.

A person who enters any dwelling or other premises¹² may take with him such other persons and such equipment as may be necessary¹³. If, when he leaves, the dwelling is, or the other premises are, unoccupied, he must leave them as effectively secured against trespassers as he found them¹⁴.

A person who wilfully obstructs any person exercising any powers conferred by these provisions is liable on summary conviction to a penalty¹⁵.

Any seized equipment¹⁶ may be retained: (a) during the period of 28 days beginning with the seizure¹⁷; or (b) if it is related equipment¹⁸ in proceedings for a noise offence¹⁹ instituted within that period against any person, until he is sentenced or otherwise dealt with for the offence, or acquitted of the offence, or the proceedings are discontinued²⁰.

Where a person is convicted of a noise offence, the court may make an order (a 'forfeiture order') for the forfeiture of any related equipment²¹. In considering whether to make a forfeiture order in respect of any equipment, a court must have regard to the value of the equipment and to the likely financial and other effects on the offender of the making the order (taken together with any other order that the court contemplates making)²². A forfeiture order operates to deprive the offender of any rights in the equipment to which it relates²³. Where any equipment has been forfeited, a magistrates' court may, on application by a claimant of the equipment (other than the person in whose case the forfeiture order was made), make an order for delivery of the equipment to the applicant if it appears to the court that he is the owner of the equipment²⁴. Where the responsible local authority²⁵ is of the opinion that the person in whose

case the forfeiture order was made is not the owner of the equipment, it must take reasonable steps to bring to the attention of the persons who may be entitled to do so their right to make an application for an order for delivery²⁶. An order for delivery under these provisions does not affect the right of any person to take, within the period of six months beginning with the date of the order, proceedings for the recovery of the equipment from the person in possession of it in pursuance of the order, but the right ceases on the expiry of that period²⁷. If on the expiry of the period of six months beginning with the date on which a forfeiture order was made in respect of the equipment no order for delivery has been made, the responsible local authority may dispose of the equipment²⁸.

If in proceedings for a noise offence no order for forfeiture of related equipment is made, the court (whether or not a person is convicted of the offence) may give such directions as to the return, retention or disposal of the equipment by the responsible local authority as it thinks fit²⁹. Where in the case of any seized equipment no proceedings in which it is related equipment are begun within the period of 28 days mentioned in head (a) above, the responsible local authority must return the equipment to any person who appears to it to be the owner of the equipment and who, within a specified period³⁰, makes a claim for the return of the equipment³¹. The responsible local authority must take reasonable steps to bring to the attention of persons who may be entitled to do so their right to make such a claim³². If no such person makes such a claim within the specified period, the responsible local authority may dispose of the equipment³³. The responsible local authority is not required to return any seized equipment until the person making the claim has paid any such reasonable charges for the seizure, removal and retention of the equipment as the authority may demand³⁴.

If equipment is sold³⁵ and, before the expiration of the period of one year beginning with the date on which the equipment is sold, any person satisfies the responsible local authority that at the time of its sale he was the owner of the equipment³⁶, then the authority is to pay him any sum by which any proceeds of sale exceed any such reasonable charges for the seizure, removal or retention of the equipment as the authority may demand³⁷.

The responsible local authority cannot demand charges from any person³⁸ who it is satisfied did not know, and had no reason to suspect, that the equipment was likely to be used in the emission of noise exceeding the permitted level³⁹.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the service of warning notices see PARA 849. As to the meaning of 'warning notice' see PARA 849 note 9.

3 Noise Act 1996 s 10(1)(a) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 13(1), (2)(a)). See PARA 849 note 4. As to the meaning of 'dwelling' see PARA 849 note 2.

4 As to the period specified see PARA 849 note 14.

5 As to the meaning of 'permitted level' see PARA 849 note 8.

6 Noise Act 1996 s 10(1)(b) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 13(1), (2)(b)). As to the meaning of 'complainant's dwelling' see PARA 849.

7 Noise Act 1996 s 10(2) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 13(1), (3)).

A person exercising the power conferred by the Noise Act 1996 s 10(2) must produce his authority, if he is required to do so: s 10(3).

8 Noise Act 1996 s 10(4)(a) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 13(1), (4)(a)).

9 Noise Act 1996 s 10(4)(b) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 13(1), (4)(b)).

10 Noise Act 1996 s 10(4)(c) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 13(1), (4)(c)).

11 Noise Act 1996 s 10(4) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 13(1), (4)(d)).

A warrant issued under the Noise Act 1996 s 10(4) continues in force until the purpose for which the entry is required has been satisfied: s 10(6).

12 le under the Noise Act 1996 s 10(2) or by virtue of a warrant issued under s 10(4).

13 Noise Act 1996 s 10(5) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 13(1), (5)(a)).

14 Noise Act 1996 s 10(5) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 13(1), (5)(b)).

15 Noise Act 1996 s 10(8). The penalty is a fine not exceeding level 3 on the standard scale: see s 10(8). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

16 'Seized equipment' means equipment seized in the exercise of the power of seizure and removal conferred by the Noise Act 1996 s 10(2) or the Environmental Protection Act 1990 s 81(3) (as extended by the Noise Act 1996 s 10(7)) (see **NUISANCE** vol 78 (2010) PARA 207): Noise Act 1996 s 10(9), Schedule para 1(b).

17 Noise Act 1996 Schedule para 2(1)(a). See note 20.

18 'Related equipment', in relation to any conviction of or proceedings for a noise offence, means seized equipment used or alleged to have been used in the commission of the offence: Noise Act 1996 Schedule para 1(c).

19 'Noise offence' means: (1) in relation to equipment seized under the Noise Act 1996 s 10(2), an offence under s 4 or s 4A (see PARA 850); (2) in relation to equipment seized under the Environmental Protection Act 1990 s 81(3) (as extended by the Noise Act 1996 s 10(7)) (see **NUISANCE** vol 78 (2010) PARA 207), an offence under the Environmental Protection Act 1990 s 80(4) (see **NUISANCE** vol 78 (2010) PARA 203) in respect of a statutory nuisance falling within s 79(1)(g) (see **NUISANCE** vol 78 (2010) PARA 156 head (9)): Noise Act 1996 Schedule para 1(a) (amended by the Clean Neighbourhoods and Environment Act 2005 Sch 1 paras 1, 14).

20 Noise Act 1996 Schedule para 2(1)(b). The provisions of Schedule para 2(1) do not authorise the retention of seized equipment if: (1) a person has been given a fixed penalty notice under s 8 (see PARA 852) in respect of any noise; (2) the equipment was seized because of its use in the emission of the noise in respect of which the fixed penalty was given; and (3) that person has paid the fixed penalty before the end of the period allowed for its payment: Schedule para 2(2).

21 Noise Act 1996 Schedule para 3(1). The court may make a forfeiture order whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in any enactment: Schedule para 3(2). As to the power to make orders and regulations under the Noise Act 1996 generally see PARA 852 note 5.

22 Noise Act 1996 Schedule para 3(3). The phrase 'have regard' has no precise legal meaning: *Simpson v Edinburgh Corpn* 1960 SC 313, 1961 SLT 17, Ct of Sess.

23 Noise Act 1996 Schedule para 3(4).

24 Noise Act 1996 Schedule para 4(1). Such an application cannot succeed unless the claimant satisfies the court: (1) that he had not consented to the offender having possession of the equipment; or (2) that he did not know, and had no reason to suspect, that the equipment was likely to be used in the commission of a noise offence: Schedule para 4(3). No application may be made by any claimant of the equipment after the expiry of the period of six months beginning with the date on which a forfeiture order was made in respect of the equipment: Schedule para 4(2).

25 'Responsible local authority', in relation to seized equipment, means the local authority by or on whose behalf the equipment was seized: Noise Act 1996 Schedule para 1(d).

26 Noise Act 1996 Schedule para 4(4).

27 Noise Act 1996 Schedule para 4(5).

28 Noise Act 1996 Schedule para 4(6).

29 Noise Act 1996 Schedule para 5.

30 le the period of six months beginning with the expiry of the 28-day period mentioned in head (a) in the text: Noise Act 1996 Schedule para 6(2).

31 Noise Act 1996 Schedule para 6(1)(a).

32 Noise Act 1996 Schedule para 6(3).

33 Noise Act 1996 Schedule para 6(1)(b).

34 Noise Act 1996 Schedule para 6(4).

35 le in pursuance of the Noise Act 1996 Schedule para 4(6), Schedule para 6, or directions under Schedule para 5: Schedule para 6(5)(a).

36 Noise Act 1996 Schedule para 6(5)(b).

37 Noise Act 1996 Schedule para 6(5).

38 le under the Noise Act 1996 Schedule para 6(4) or Schedule para 6(5).

39 Noise Act 1996 Schedule para 6(6).

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(9) LONDON

854. London.

Under Part IX of the Greater London Authority Act 1999¹, the Mayor of London² is required to prepare and publish a London ambient noise strategy³. Providers of air navigation services must in certain circumstances consult the Mayor about alterations to those services⁴, and provision is made as to consultation at aerodromes⁵.

1 le the Greater London Authority Act 1999 Pt IX (ss 351-374).

2 As to the Mayor of London see PARA 100; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 44 et seq.

3 See the Greater London Authority Act 1999 s 370; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 186. The Mayor of London's Ambient Noise Strategy was available, at the date at which that this volume states the law, at www.london.gov.uk.

4 See the Greater London Authority Act 1999 s 371; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 187.

5 See the Civil Aviation Act 1982 s 35; and **AIR LAW** vol 2 (2008) PARA 253; **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 187.

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16. CLEANSING, FUMIGATION AND DESTRUCTION OF PESTS

(1) CLEANSING OF PREMISES, ARTICLES AND PERSONS

855. Cleansing of filthy or verminous premises.

Where a local authority¹, upon consideration of a report from any of its officers or other information in its possession, is satisfied that any premises² are in such a filthy or unwholesome condition as to be prejudicial to health³, or are verminous⁴, it must give notice to the owner⁵ or occupier of the premises requiring him to take such steps as may be specified in the notice⁶ to remedy the condition of the premises by cleansing and disinfecting them⁷. The notice may require among other things the removal of wallpaper or other covering of the walls, or, in the case of verminous premises, the taking of such steps as may be necessary for destroying or removing vermin⁸.

Where the authority is satisfied that any such premises are verminous, the notice served may require that the authority is to be allowed to employ gas for the purpose of destroying vermin on the premises, but in that case the notice must be served both on the owner and on the occupier of the premises, and the authority must bear the cost of its operations and may provide temporary shelter or house accommodation for any person compelled to leave the premises by reason of its operations⁹. In this case, the notice to the occupier may also require that the premises are to be vacated from a specified date until the local authority gives the occupier further notice that they can safely be reoccupied¹⁰. The authority may also serve notice on the occupiers of any other premises having any floor, wall or ceiling contiguous with the first-mentioned premises, or into which there is reason to apprehend that the gas may penetrate, requiring that those other premises are to be vacated similarly¹¹.

If a person on whom a notice is served fails to comply with its requirements, the authority may itself carry them out and recover from him the expenses it reasonably incurs in so doing, and, without prejudice to its right to exercise that power, he is liable to a penalty¹².

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'premises' see PARA 1 note 34. The Public Health Act 1936 s 83 does not apply to any premises forming part of a factory or of a mine or quarry within the meaning of the Mines and Quarries Act 1954 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARAS 5-6): Public Health Act 1936 s 83(4) (added by the Public Health Act 1961 s 35). As to the meaning of 'factory' see PARA 114 note 3.

3 Public Health Act 1936 s 83(1)(a) (s 83(1) substituted by the Public Health Act 1961 s 35). As to the meaning of 'prejudicial to health' see **NUISANCE** vol 78 (2010) PARA 158.

4 Public Health Act 1936 s 83(1)(b) (as substituted: see note 3). As to the meaning of 'verminous' see note 8.

5 As to the meaning of 'owner' see PARA 116.

6 The notice may require: (1) the interior surface of premises used for human habitation or as shops or offices to be papered, painted or distempered; and (2) the interior surface of any other premises to be painted, distempered or whitewashed: Public Health Act 1936 s 83(1A)(a), (b) (s 83(1A) added by the Public Health Act 1961 s 35). The notice must allow the person served, or the local authority acting in his default, to choose, in a case under head (1) above, between papering, painting and distempering, and, in a case under head (2) above, between painting, distempering and whitewashing: Public Health Act 1936 s 83(1A) (as so added).

7 Public Health Act 1936 s 83(1) (as substituted: see note 3). As to the provision of cleansing stations see PARA 860.

8 Public Health Act 1936 s 83(1) (as substituted: see note 3). 'Vermin', in its application to insects and parasites, includes their eggs, larvae and pupae; and 'verminous' is to be construed accordingly: s 90(1).

9 Public Health Act 1936 s 83(3). As to fumigation of buildings and ships see PARA 856.

10 Public Health Act 1961 s 36(1)(a). As to the meaning of 'local authority' see PARA 99. No person is required under s 36 to vacate any premises used for human habitation for any period unless alternative shelter or other accommodation has been provided for him by the local authority free of charge for that period; and any notice given under this provision must specify the alternative shelter or other accommodation so provided: s 36(2). As to removal expenses see note 11. A person on whom a notice is served under s 36 may, within the period of seven days from the date on which the notice was served on him, appeal to a magistrates' court; and the requirements included in the notice in pursuance of s 36 do not take effect until the expiration of that period or, where an appeal is brought within that period, before the appeal is disposed of or withdrawn: s 36(3). The provisions of s 36(3) as to the period within which an appeal is to be brought have effect notwithstanding anything in the Public Health Act 1936 s 300(2) (see PARA 129), as applied to the Public Health Act 1961 Pt II (ss 17-37): s 36(3).

11 Public Health Act 1961 s 36(1)(b). As to alternative accommodation and appeals see note 10. The authority must defray reasonable expenses incurred in removing from and returning to premises in compliance with a notice under s 36(1)(b), and may if it thinks fit defray such expenses incurred in compliance with a notice under s 36(1)(a): s 36(5).

12 Public Health Act 1936 s 83(2). The penalty is a fine not exceeding level 1 on the standard scale and a further fine not exceeding £2 for each day on which the offence continues after conviction: s 83(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46; and the Decimal Currency Act 1969 s 10(1)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. In any proceedings under the Public Health Act 1936 s 83(2), it is open to the defendant to question the reasonableness of the authority's requirements or of its decision to address its notice to him and not to the occupier or, as the case may be, the owner of the premises: s 83(2) proviso. So much of s 83(2) as imposes a penalty for failure to comply with the requirements of a notice under it also applies to the requirements included in the notice by virtue of the Public Health Act 1961 s 36 (see the text and notes 10-11): s 36(4).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/16. CLEANSING, FUMIGATION AND DESTRUCTION OF PESTS/(1) CLEANSING OF PREMISES, ARTICLES AND PERSONS/856. Fumigation with certain fumigants.

856. Fumigation with certain fumigants.

Regulations¹ provide that an employer must not undertake any fumigation² in which the fumigant used or intended to be used is hydrogen cyanide, phosphine or methyl bromide (except in certain defined situations³) unless he has notified prescribed persons⁴ and provided them with specified information⁵ at least 24 hours in advance or such shorter time in advance as the persons required to be notified may agree⁶. An employer undertaking such a fumigation must ensure that, before the fumigant is released, suitable warning notices have been affixed at all points of reasonable access to the premises or to those parts of the premises in which the fumigation is to be carried out, and that after the fumigation has been completed and the premises are safe to enter those warning notices are removed⁷.

1 In the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677: see **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 619 et seq.

2 'Fumigation' means an operation in which a substance is released into the atmosphere so as to form a gas to control or kill pests or other undesirable organisms; and 'fumigate' and 'fumigant' are to be construed accordingly: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 2(1).

3 See the Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 14(1), Sch 8. The excepted situations are:

155 (1) in respect of hydrogen cyanide, when the fumigations are carried out: (a) for research; or (b) in fumigation chambers; or (c) in the open air to control or kill mammal pests (reg 14(1), Sch 8);

156 (2) in respect of methyl bromide, when the fumigations: (a) are carried out for research; (b) are carried out in fumigation chambers; (c) are fumigations of soil outdoors under gas-proof sheeting where not more than 1,000 kg is used in any period of 24 hours on the premises; (d) are fumigations of soil under gas-proof sheeting in glasshouses where not more than 500 kg is used in any period of 24 hours on the premises; (e) are fumigations of compost outdoors under gas-proof sheeting where not more than 10 kg of methyl bromide is used in any period of 24 hours on the premises; (f) are fumigations under gas-proof sheeting inside structures other than glasshouses and mushroom houses where not more than 5 kg of methyl bromide is used in each structure during any period of 24 hours; (g) are fumigations of soil or compost in mushroom houses where not more than 5 kg of methyl bromide is used in any one fumigation in any period of 24 hours; (h) are fumigations of containers where not more than 5 kg of methyl bromide is used in any one fumigation in any period of 24 hours (reg 14(1), Sch 8);

157 (3) in respect of phosphine, when the fumigations: (a) are carried out for research; or (b) are carried out in fumigation chambers; or (c) are fumigations under gas-proof sheeting inside structures where not more than 1 kg of phosphine in each structure is used in any period of 24 hours; (d) are fumigations in containers where not more than 0.5 kg of phosphine is used in any one fumigation in any period of 24 hours; (e) are fumigations in individual impermeable packages; (f) are fumigations in the open air to control or kill mammal pests (reg 14(1), Sch 8).

4 In the case of a fumigation to be carried out within the area of a harbour authority, the prescribed persons are the harbour authority (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 619 et seq), an inspector appointed under the Health and Safety at Work etc Act 1974 s 19 (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 375), if that inspector so requires, and: (1) where the fumigation is to be carried out on a sea-going ship, the chief fire officer of the area in which the ship is situated and the officer in charge of Her Majesty's Revenue and Customs at the harbour; or (2) if it is the space fumigation of a building, the chief fire officer of the area in which the building is situated: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 14(2), Sch 9 para 1 (amended by virtue of the Commissioners for Revenue and Customs Act

2005 s 50(2), (7)). In the case of any other fumigation, the prescribed persons are: (a) the police officer for the time being in charge of the police station for the police district in which the fumigation is carried out; (b) an inspector appointed under the Health and Safety at Work etc Act 1974 s 19, if that inspector so requires; and (c) where the fumigation is to be carried out on a sea-going ship or is the space fumigation of a building, the chief fire officer of the area in which the ship or building is situated: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 9 para 2. As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

5 The information must include: (1) the name, address and place of business of the fumigator and his telephone number; (2) the name of the person requiring the fumigation to be carried out; (3) the address and description of the premises where the fumigation is to be carried out; (4) the date on which the fumigation is to be carried out and the estimated time of commencement and completion; (5) the name of the operator in charge of the fumigation; and (6) the fumigant to be used: Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, Sch 9 para 3.

6 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 14(2).

7 Control of Substances Hazardous to Health Regulations 2002, SI 2002/2677, reg 14(3).

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857. Cleansing or destruction of filthy or verminous articles.

Where it appears to a local authority¹ upon a certificate of the proper officer², that any article in any premises³: (1) is in so filthy a condition as to render its cleansing, purification or destruction necessary in order to prevent injury, or danger of injury, to the health of any person in the premises⁴; or (2) is verminous⁵, or by reason of its having been used by or having been in contact with a verminous person is likely to be verminous⁶, the authority must cause the article to be cleansed, purified, disinfected or destroyed, as the case may require, at the expense of the authority and, if necessary, to be removed from the premises⁷.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the proper officer see PARA 889 note 3.

3 As to the meaning of 'premises' see PARA 1 note 34.

4 Public Health Act 1936 s 84(a).

5 As to the meaning of 'verminous' see PARA 855 note 8.

6 Public Health Act 1936 s 84(b).

7 Public Health Act 1936 s 84 (amended by virtue of the Local Government Act 1972 Sch 29 para 4(1)(a)). As to the provision of cleansing stations see PARA 860.

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CLEANSING, FUMIGATION AND DESTRUCTION OF PESTS/(1) CLEANSING OF PREMISES,
ARTICLES AND PERSONS/858. Prohibition on sale of verminous articles.

858. Prohibition on sale of verminous articles.

No dealer¹ may: (1) prepare for sale²; or (2) sell or offer or expose for sale³; or (3) deposit with any person for sale or preparation for sale⁴, any household article if it is to his knowledge verminous⁵, or if by taking reasonable precautions he could have known it to be verminous⁶. If a household article which is verminous is on any premises⁷: (a) being prepared by a dealer for sale⁸; or (b) offered or exposed by a dealer for sale⁹; or (c) deposited by a dealer with any person for sale or preparation for sale¹⁰, the proper officer¹¹ may cause the article to be disinfected or destroyed as the case may require, and if necessary for that purpose to be removed from the premises¹².

1 For these purposes, 'dealer' means a person who trades or deals in any household articles: Public Health Act 1961 s 37(4)(a). 'Household article' means an article of furniture, bedding or clothing or any similar article: s 37(4)(b).

2 Public Health Act 1961 s 37(1)(a). For these purposes, references to preparation for sale does not include disinfestation: s 37(4)(c).

3 Public Health Act 1961 s 37(1)(b).

4 Public Health Act 1961 s 37(1)(c).

5 As to the meaning of 'verminous' see PARA 855 note 8; definition applied by virtue of the Public Health Act 1961 s 1(1).

6 Public Health Act 1961 s 37(1). Any person contravening this provision is liable to a fine not exceeding level 1 on the standard scale: s 37(3) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

7 As to the meaning of 'premises' see PARA 1 note 34; definition applied by virtue of the Public Health Act 1961 s 1(1).

8 Public Health Act 1961 s 37(2)(a).

9 Public Health Act 1961 s 37(2)(b).

10 Public Health Act 1961 s 37(2)(c).

11 As to the proper officer see PARA 889 note 3.

12 Public Health Act 1961 s 37(2) (amended by virtue of the Local Government Act 1972 Sch 29 para 4(1) (a)). The local authority may recover from the dealer the expenses reasonably incurred by the local authority in taking any action under this provision: Public Health Act 1961 s 37(2) (as so amended). As to the meaning of 'local authority' see PARA 99.

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859. Cleansing of verminous persons.

Upon the application of any person, a county council or a local authority¹ may take such measures as are, in its opinion, necessary to free him and his clothing from vermin².

Where it appears to a county council or a local authority, upon a report from its proper officer³, that any person or the clothing of any person is verminous⁴, the council or authority may, if he consents⁵, cause him to be removed to a cleansing station⁶. If he does not consent, the council or authority may apply to a magistrates' court, and the court, if satisfied that it is necessary that he or his clothing ought to be cleansed, may make an order for his removal to and detention in a cleansing station for such period, and subject to such conditions, as may be specified in the order⁷. The council or authority must take such measures as may be, in its opinion, necessary to free the person and his clothing from vermin⁸.

The cleansing of females may only be carried out by a registered medical practitioner or by a woman duly authorised by the proper officer⁹.

No charge may be made in respect of the cleansing of a person or his clothing, or in respect of his removal to, or maintenance in, a cleansing station¹⁰.

¹ As to the meaning of 'local authority' see PARA 99.

² Public Health Act 1936 s 85(1). As to the meaning of 'vermin' see PARA 855 note 8.

³ As to the proper officer see PARA 889 note 3.

⁴ As to the meaning of 'verminous' see PARA 855 note 8.

⁵ Any consent required to be given for the purposes of the Public Health Act 1936 s 85 may, in the case of a person under the age of 16, be given by his parent or guardian: s 85(5).

⁶ Public Health Act 1936 s 85(2) (amended by virtue of the Local Government Act 1972 Sch 29 para 4(1)(a)). As to cleansing stations see PARA 860. The powers conferred on a county council or local authority by the Public Health Act 1936 s 85 are in addition to, and not in derogation of, any power in relation to the cleansing of children which may be exercisable by it as a local education authority: s 85(7). As to the powers of cleansing exercisable as a local education authority see the Education Act 1996 ss 521-525; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 548 et seq. As to infectious schoolchildren see PARA 905.

⁷ Public Health Act 1936 s 85(2) (as amended: see note 6). As to applications to magistrates' courts see PARA 129.

⁸ Public Health Act 1936 s 85(3).

⁹ Public Health Act 1936 s 85(4).

¹⁰ Public Health Act 1936 s 85(6).

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860. Provision of cleansing stations.

County councils and local authorities¹ may provide such cleansing stations as may be necessary for the discharge of their statutory functions² in relation to the cleansing of premises, articles and persons³.

1 As to the meaning of 'local authority' see PARA 99.

2 Ie under the Public Health Act 1936 ss 83-85 (see PARAS 855, 857, 859): see s 86.

3 Public Health Act 1936 s 86. As to disinfecting stations see PARA 888.

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(2) DAMAGE BY PESTS

(i) Legislation and Administration

861. The Prevention of Damage by Pests Act 1949.

The Prevention of Damage by Pests Act 1949¹ provides for the destruction of rats and mice and for preventing loss of food by infestation². By Order in Council³, the provisions of the Act apply, subject to such exceptions and modifications as may be prescribed, to any vessel⁴ which is not a sea-going ship⁵, and certain provisions relating to infestation of food also apply, with modifications, to sea-going ships⁶. The Act may be applied by Order in Council to aircraft⁷.

1 The Prevention of Damage by Pests Act 1949, with the exception of s 23 (see the text to notes 3-7), does not apply to Northern Ireland: see s 29(3).

2 As to rats and mice see PARAS 873-876. As to the infestation of food see PARAS 877-882.

3 Such orders may be revoked or varied by subsequent orders (see s 23(2)), and may be annulled by resolution of either House of Parliament (see the Prevention of Damage by Pests Act 1949 s 21(2); and PARA 865). As to the order made see the Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967 (amended by SI 1956/420; SI 1965/654).

4 'Vessel' includes hovercraft within the meaning of the Hovercraft Act 1968 s 4(1) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 326): s 3, Schedule para 3; Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1 Pts A, B (amended by SI 1978/1309; SI 1979/1309; SI 1980/715; SI 1983/769; SI 1990/2594).

5 See the Prevention of Damage by Pests Act 1949 s 23(1); and the Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 3(1). The Prevention of Damage by Pests Act 1949 s 23 applies to Northern Ireland: see s 29(1). None of the provisions of the Prevention of Damage by Pests Act 1949 relating to structural repairs or other works (see ss 4(2)(b), 14(2)(c); and PARAS 875, 880) applies to any kind of vessel: Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 3(1) proviso. 'Sea-going ship' means: (1) any vessel employed in trading or going between a place in the United Kingdom, the Channel Islands or the Isle of Man and a place not within the United Kingdom, the Channel Islands or the Isle of Man; or (2) any vessel (other than a vessel wholly or mainly engaged in trading or going within the limits of any harbour, haven, dock, estuary, or on any tidal or non-tidal river or inland waterway or a vessel used for storage) whose master holds either a valid deratisation certificate or valid deratisation exemption certificate (ie now a valid ship sanitation control certificate or valid ship sanitation control exemption certificate) (see PARA 944) or a rodent control certificate issued not more than four months previously: arts 2, 3(2), Schedule. Charges may be made for inspection in connection with a rodent control certificate: see art 3(3) (added by SI 1956/420). Charges may also be made for any inspection of a vessel for the purposes of any Order in Council under the Prevention of Damage by Pests Act 1949 s 23: see the Pests Act 1954 s 6 (amended by the Local Government Act 1974 Sch 6 para 10, Sch 8).

6 See the Prevention of Damage by Pests Act 1949 s 23(1); and the Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, arts 8-10. The provisions of the Prevention of Damage by Pests Act 1949 ss 16, 17, ss 21-30 (see PARAS 865 et seq, 882) apply to sea-going ships without modification; and ss 13(1), 14(1), (2) (see PARAS 877, 880) apply as modified; but no provision relating to structural repairs or other works (see s 14(2)(c); and PARA 880) applies: see the Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, arts 3(1) proviso, 8-10.

7 Prevention of Damage by Pests Act 1949 s 23(1). At the date at which this volume states the law no order applying the Prevention of Damage by Pests Act 1949 to aircraft had been made.

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862. Other legislation.

In addition to the requirements of the Prevention of Damage by Pests Act 1949, the owner of a mine must take such steps as are necessary to keep all parts of the mine below ground free from rats and mice¹.

The Secretary of State² has powers to require the killing, taking or destruction of certain animals and birds, including a power to make rabbit clearance orders, for the purpose of preventing damage by pests³.

¹ See the Mines and Quarries Act 1954 s 95; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 538.

² As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

³ See the Agriculture Act 1947 ss 98-101; the Prevention of Damage by Pests Act 1949 s 20(1), (2); the Pests Act 1954 ss 1-4; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1021 et seq.

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863. Functions of the Secretary of State in relation to pest control.

The provisions of the Prevention of Damage by Pests Act 1949 relating to the infestation of food¹ are executed by the Secretary of State², who also exercises control over the functions of local authorities³.

Any expenses of the Secretary of State under the Prevention of Damage by Pests Act 1949, or in carrying out research in matters connected with his functions and functions of local authorities under that Act, must be paid out of money provided by Parliament⁴. Any receipts of his under that Act must be paid into the Exchequer⁵.

1 In the Prevention of Damage by Pests Act 1949 Pt II (ss 13-17): see PARAS 869, 877 et seq.

2 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 See the Prevention of Damage by Pests Act 1949 s 12; and PARA 864.

4 Prevention of Damage by Pests Act 1949 s 27(1)(a), (c). This provision does not apply in so far as such a sum is payable by the National Assembly for Wales (see PARA 59).

5 Prevention of Damage by Pests Act 1949 s 27(2).

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864. Control over local authority functions.

Where the Secretary of State¹ is satisfied, on complaint or otherwise, that any of the functions of a local authority² relating to rats and mice³ are not being satisfactorily performed by the authority, he may by order⁴ empower any named person to exercise those functions on behalf of the authority⁵. Before making such an order, the Secretary of State must give the local authority an opportunity of making representations to him, and must take into consideration any representations made, and, if the authority so requires, cause a local inquiry to be held⁶.

1 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'local authority' see PARA 99.

3 I.e. its functions under the Prevention of Damage by Pests Act 1949 Pt I (ss 1-12): see PARA 873 et seq.

4 As to the making of orders see PARA 865.

5 Prevention of Damage by Pests Act 1949 s 12(2). As to default powers generally see PARA 64.

6 Prevention of Damage by Pests Act 1949 s 12(3). The Prevention of Damage by Pests Act 1949 provides that the provisions of the Local Government Act 1933 s 290(2)-(5) have effect with respect to any such inquiry, but those provisions have been repealed (see now the Local Government Act 1972 s 250(2)-(5); and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 105): see the Prevention of Damage by Pests Act 1949 s 12(3). Any expenses which the person named in the order incurs must be paid by the local authority to the Secretary of State on demand: s 12(4). The order may be varied or revoked by a subsequent order: s 12(5).

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865. Orders and regulations.

The powers of the Secretary of State¹ to make any regulations under the Prevention of Damage by Pests Act 1949 are exercisable by statutory instrument². Any statutory instrument containing an Order in Council or regulations made under that Act may be annulled by resolution of either House of Parliament³.

1 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Prevention of Damage by Pests Act 1949 s 21(1) (amended by the Local Government, Planning and Land Act 1980 Sch 34 Pt I).

3 Prevention of Damage by Pests Act 1949 s 21(2). See further **PARLIAMENT** vol 34 (Reissue) PARA 728; **STATUTES** vol 44(1) (Reissue) PARA 1516-1517.

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(ii) Powers of Entry

866. Powers of entry for inspection and action.

A person duly authorised in writing by a local authority¹ or by a person empowered by the Secretary of State² to exercise functions of a local authority as to rats and mice³ may enter upon any land⁴ at any reasonable time⁵: (1) for the purposes of carrying out any inspection required, by the statutory provisions as to rats and mice⁶, to be carried out by a local authority⁷; (2) for the purpose of ascertaining whether there is or has been, on or in connection with the land, a failure to comply with any requirement of those provisions or any notice served under them⁸; (3) for the purpose of taking steps which the local authority is authorised to take⁹ on or in relation to the land for destroying rats or mice or for keeping the land free from them¹⁰.

A person duly authorised in writing by the Secretary of State may enter upon any land at any reasonable time: (a) for the purpose of ascertaining whether there is or has been, on or in connection with the land or any vehicle on it, any failure to comply with any requirement of the statutory provisions as to the infestation of food¹¹ or any directions¹² given under them¹³; (b) for the purpose of taking steps authorised to be taken on or in relation to the land¹⁴ by a person named in an order made by the Secretary of State or by the local authority under it¹⁵. A person who enters any premises for the purposes specified in head (a) above may take samples of any food¹⁶ found there¹⁷.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Ie under the Prevention of Damage by Pests Act 1949 Pt I (ss 1-12): see PARA 873 et seq.

4 'Land' includes land covered with water, and any building or part of a building: Prevention of Damage by Pests Act 1949 s 28(1).

5 Prevention of Damage by Pests Act 1949 s 22(1).

6 Ie by the Prevention of Damage by Pests Act 1949 Pt I.

7 Prevention of Damage by Pests Act 1949 s 22(1)(a).

8 Prevention of Damage by Pests Act 1949 s 22(1)(b).

9 Ie by the Prevention of Damage by Pests Act 1949 s 5 or s 6: see PARAS 875-876.

10 Prevention of Damage by Pests Act 1949 s 22(1)(c).

11 Ie the Prevention of Damage by Pests Act 1949 Pt II (ss 13-17).

12 As to such directions see the Prevention of Damage by Pests Act 1949 ss 14-16; and PARAS 880-882.

13 Prevention of Damage by Pests Act 1949 s 22(2)(a).

14 Ie under the Prevention of Damage by Pests Act 1949 Pt II.

15 Prevention of Damage by Pests Act 1949 s 22(2)(b).

16 'Food' includes any substance ordinarily used in the composition or preparation of food, the seeds of any cereal or vegetable and any feeding stuffs for animals, but does not include growing crops: Prevention of Damage by Pests Act 1949 s 28(1). As to food generally see **FOOD**.

17 Prevention of Damage by Pests Act 1949 s 22(2).

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867. Evidence of authority, notice and compensation.

Any person authorised to enter upon any land¹ to carry out certain functions relating to rats and mice and the infestation of food² must, if so required, produce evidence of his authority before so entering and must not demand admission as of right to any land which is occupied³ unless 24 hours' notice⁴ of the intended entry has been given to the occupier⁵.

If any land is damaged in the exercise of the powers of entry⁶, any person interested in the land may recover compensation for the damage from the local authority on whose behalf the entry was effected, or from the Secretary of State⁷, as the case may be⁸.

1 As to the meaning of 'land' see PARA 866 note 4.

2 Ie under the Prevention of Damage by Pests Act 1949 s 22(1), (2): see PARA 866.

3 For the purposes of the Prevention of Damage by Pests Act 1949 Pt I (ss 1-12), any land which is vested in or under the control of a local authority (whether or not being the local authority for the purposes of Pt I) and is not occupied by any other person is deemed to be occupied by that authority: s 28(2). As to the meaning of 'local authority' see PARA 99.

4 Seven days' notice is required before entry is made under the Prevention of Damage by Pests Act 1949 s 6: see PARA 876 note 4.

5 Prevention of Damage by Pests Act 1949 s 22(3).

6 Ie the power under the Prevention of Damage by Pests Act 1949 s 22: see PARA 866.

7 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

8 Prevention of Damage by Pests Act 1949 s 22(6).

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868. Obstruction and disclosure of information.

Any person who wilfully obstructs the exercise of the powers of entry¹, or the exercise of certain powers² of a local authority or a person appointed by the Secretary of State to take steps in default³, is liable to a penalty⁴.

Any person admitted into a factory, workshop or workplace whilst exercising the powers of entry who discloses any information which he there obtained as to any manufacturing process or trade secret, is, unless the disclosure is made in the course of performing his duty in connection with the purpose for which he was authorised to enter the premises, liable to a penalty⁵.

1 le under the Prevention of Damage by Pests Act 1949 s 22(1), (2): see PARA 866.

2 le the powers conferred by the Prevention of Damage by Pests Act 1949 s 5, s 6(1) or s 16(1): see PARAS 875-876, 882. As to the meaning of 'local authority' see PARA 99. As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 See PARA 864.

4 Prevention of Damage by Pests Act 1949 s 22(4) (amended by the Pests Act 1954 s 5(3)). The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see the Prevention of Damage by Pests Act 1949 s 22(4) (as so amended; and further amended by virtue of the Criminal Justice Act 1982 ss 35, 37, 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to proceedings for offences see PARA 870.

5 Prevention of Damage by Pests Act 1949 s 22(5). The penalty on summary conviction is a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding three months: see s 22(5) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As from a day to be appointed, the Prevention of Damage by Pests Act 1949 s 22(5) is further amended so as to remove the reference to imprisonment: s 22(5) (prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law no such day had been appointed.

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(iii) Penalties, Proceedings and Notices

869. Offences relating to the infestation of food.

Subject to the right to appeal against directions¹, any person who contravenes or fails to comply with the statutory provisions as to the infestation of food² or any directions given under them³ is guilty of an offence and is liable to a penalty⁴.

1 Ie the right under the Prevention of Damage by Pests Act 1949 s 15: see PARA 881. As to directions for preventing or mitigating infection see s 14; and PARA 880.

2 Ie the Prevention of Damage by Pests Act 1949 Pt II (ss 13-17): see PARA 877 et seq.

3 See the Prevention of Damage by Pests Act 1949 ss 14, 15, 16; and PARAS 880-882.

4 Prevention of Damage by Pests Act 1949 s 17. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale: s 17 (amended by virtue of the Criminal Justice Act 1982 ss 35, 37, 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to proceedings for offences see PARA 870.

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870. Proceedings for offences.

Proceedings for an offence under the Prevention of Damage by Pests Act 1949 may not be instituted except by or with the consent of the Secretary of State¹ or the local authority².

Where such an offence is committed by a body corporate, every person who, at the time of the commission of the offence, was a director³, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, is deemed to be guilty unless he proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent its commission as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances⁴.

1 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Prevention of Damage by Pests Act 1949 s 26(1). As to the meaning of 'local authority' see PARA 99.

3 For these purposes, 'director', in relation to any body corporate established by or under any enactment for the purposes of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body: Prevention of Damage by Pests Act 1949 s 26(3).

4 Prevention of Damage by Pests Act 1949 s 26(2).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/16. CLEANSING, FUMIGATION AND DESTRUCTION OF PESTS/(2) DAMAGE BY PESTS/(iii) Penalties, Proceedings and Notices/871. Recovery of expenses by local authorities.

871. Recovery of expenses by local authorities.

Any expenses recoverable by a local authority¹ for destroying rats or mice or in keeping land free from them² may be recovered as a simple contract debt in any court of competent jurisdiction³. In proceedings for the recovery of such expenses arising out of the defendant's failure to comply with a notice⁴, it is not open to the defendant to raise by way of defence any question which he could have raised on an appeal⁵ against the notice⁶.

1 As to the meaning of 'local authority' see PARA 99.

2 I.e. expenses recoverable under the Prevention of Damage by Pests Act 1949 s 5 or s 6: see PARAS 875-876.

3 Prevention of Damage by Pests Act 1949 s 7(1). The Public Health Act 1936 s 291 and s 294 (see PARA 123) apply to expenses recoverable by a local authority under the Prevention of Damage by Pests Act 1949 s 5 or s 6 (see PARAS 875-876) as they apply to expenses recoverable under the Public Health Act 1936 by a local authority within the meaning of that Act (see PARA 99): Prevention of Damage by Pests Act 1949 s 7(2) (amended by the Local Government Act 1974 Sch 8). Reasonable establishment charges are also recoverable: see the Local Government Act 1974 s 36; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 583.

4 I.e. in proceedings for the recovery of expenses incurred by the authority under the Prevention of Damage by Pests Act 1949 s 5: see PARA 875.

5 I.e. an appeal under the Prevention of Damage by Pests Act 1949 s 4: see PARA 875.

6 Prevention of Damage by Pests Act 1949 s 7(3).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/16. CLEANSING, FUMIGATION AND DESTRUCTION OF PESTS/(2) DAMAGE BY PESTS/(iii) Penalties, Proceedings and Notices/872. Authentication of documents, service and proof of proceedings.

872. Authentication of documents, service and proof of proceedings.

General provisions of the Public Health Act 1936 relating to the authentication of documents¹, the service of notices² and proof of proceedings of local authorities³ apply to documents, notices and proceedings of local authorities in England and Wales⁴ under the statutory provisions as to rats and mice⁵ as they apply to documents, notices and proceedings under that Act⁶.

1 Ie the Public Health Act 1936 s 284: see PARA 119.

2 Ie the Public Health Act 1936 s 285: see PARA 120.

3 The Prevention of Damage by Pests Act 1949 s 10(1) refers to the Public Health Act 1936 s 286 (repealed): see now the Local Government (Miscellaneous Provisions) Act 1976 s 41; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 575.

4 As to the meaning of 'local authority' see PARA 99. This provision applies to local authorities whether or not they are local authorities within the meaning of the Public Health Act 1936: see the Prevention of Damage by Pests Act 1949 s 10(1).

5 Ie the Prevention of Damage by Pests Act 1949 Pt I (ss 1-12): see PARA 873 et seq.

6 Prevention of Damage by Pests Act 1949 s 10(1).

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(iv) Rats and Mice

873. General duties of local authorities.

It is the duty of every local authority¹ to take such steps as may be necessary to secure so far as practicable that its district² is kept free from rats and mice³, and, in particular: (1) from time to time to carry out such inspections as may be necessary for this purpose⁴; (2) to destroy rats and mice on land⁵ of which it is the occupier⁶ and otherwise to keep such land so far as practicable free from rats and mice⁷; and (3) to enforce the duties of owners⁸ and occupiers⁹ of land under the statutory provisions as to rats and mice¹⁰ and to carry out such operations as are authorised by those provisions¹¹.

1 As to the meaning of 'local authority' see PARA 99. The Secretary of State may in certain cases empower another person to exercise these functions: see PARA 864. As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 All references in the Prevention of Damage by Pests Act 1949 Pt I (ss 1-12) to the duty of a local authority to secure that its district is so far as practicable kept free from rats and mice have effect subject to the modification that general references to this duty are to be construed as including a duty to secure so far as practicable that any vessel in its district which is not a sea-going ship is kept free from rats and mice: Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 4(c). As to the meaning of 'sea-going ship' see PARA 861 note 5.

3 Prevention of Damage by Pests Act 1949 s 2(1).

4 Prevention of Damage by Pests Act 1949 s 2(1)(a).

5 As to the meaning of 'land' see PARA 866 note 4.

6 As to land deemed to be so occupied see PARA 867 note 3.

7 Prevention of Damage by Pests Act 1949 s 2(1)(b).

8 As to the meaning of 'owner' see PARA 116; definition applied by the Prevention of Damage by Pests Act 1949 s 28(1). All references in Pt I to an owner of land have effect subject to the modification that general references to an owner of land are to be construed as including references to the owner of a vessel which is not a sea-going ship: Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 4(a).

9 All references in the Prevention of Damage by Pests Act 1949 Pt I to an occupier of land have effect subject to the modification that general references to an occupier of land are to be construed as including references to the person having the custody or control of a vessel which is not a sea-going ship: Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 4(b).

10 Ie under the Prevention of Damage by Pests Act 1949 Pt I.

11 Prevention of Damage by Pests Act 1949 s 2(1)(c).

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874. Notice to local authority of rats and mice.

The occupier¹ of any land² must forthwith give notice in writing to the local authority³ if it comes to his knowledge that rats or mice are living on or resorting to the land in substantial numbers⁴. This provision does not apply to agricultural land⁵. A person is not required to give such notice to the local authority of any matters of which notice is given to the Secretary of State⁶ in pursuance of the statutory provisions⁷ as to infestation of food⁸. Any person who fails to give a notice required by this provision is liable to a penalty⁹.

1 As to the meaning of 'occupier' in relation to ships see PARA 873 note 9. As to the land vested in or under the local authority see PARA 867 note 3.

2 As to the meaning of 'land' see PARA 866 note 4.

3 As to the meaning of 'local authority' see PARA 99.

4 Prevention of Damage by Pests Act 1949 s 3(1). As to the service of notices see PARA 872.

5 Prevention of Damage by Pests Act 1949 s 3(2) (amended by the Statute Law (Repeals) Act 2004). 'Agricultural land' has the same meaning as in the Agriculture Act 1947 (see s 109(1); and **AGRICULTURAL LAND** vol 1 (2008) PARA 324); Prevention of Damage by Pests Act 1949 s 28(1).

6 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

7 In the Prevention of Damage by Pests Act 1949 Pt II (ss 13-17): see PARA 877 et seq.

8 Prevention of Damage by Pests Act 1949 s 3(3).

9 Prevention of Damage by Pests Act 1949 s 3(4). The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 3(4) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to proceedings for offences see PARA 870.

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875. Destruction of rats and mice.

If in the case of any land¹ it appears to the local authority², whether in consequence of a notice given in respect of the land to notify the authority of rats and mice³ or otherwise, that steps ought to be taken for the destruction of rats or mice on the land or otherwise for keeping the land free from rats and mice, the authority may serve a notice on the owner⁴ or occupier⁵ of the land requiring him to take, within such reasonable period as may be specified in the notice, such reasonable steps as may be so specified⁶. Any such notice may, in particular, require: (1) the application to the land of any form of treatment specified in the notice⁷; (2) the carrying out on the land of any structural repairs or other works so specified⁸. It may prescribe the times at which any treatment required by the notice is to be carried out⁹. If on a complaint made by the owner of any land it appears to a court of summary jurisdiction that the occupier of the land is preventing the owner from carrying out any work which he is required to carry out by such a notice, the court may order the occupier to permit the carrying out of the work¹⁰. A person served with any such notice which requires structural works may appeal to a magistrates' court against the notice¹¹.

Subject to the right of appeal, if any person on whom a notice is served by the local authority¹² fails to take any steps required by the notice at the time or within the period prescribed by the notice, the local authority may itself take those steps and recover from him any expenses which it reasonably incurs in doing so¹³. A person who fails to take any steps is guilty of an offence and is liable to a penalty¹⁴.

1 As to the meaning of 'land' see PARA 866 note 4.

2 As to the meaning of 'local authority' see PARA 99.

3 See under the Prevention of Damage by Pests Act 1949 s 3: see PARA 874.

4 As to the meaning of 'owner' see PARA 116; definition applied by the Prevention of Damage by Pests Act 1949 s 28(1). As to the meaning of 'owner' in relation to ships see PARA 873 note 8.

5 As to the meaning of 'occupier' in relation to ships see PARA 873 note 9. As to the land vested in or under the local authority see PARA 867 note 3.

6 Prevention of Damage by Pests Act 1949 s 4(1). A notice requiring poison treatment 'or other work of a not less effectual character' is unspecific and bad: *Perry v Garner* [1953] 1 QB 335, [1953] 1 All ER 285, DC. The notice should set out the right to appeal: *Rayner v Stepney Corp'n* [1911] 2 Ch 312. See also *Leeds City Council v Spencer* [1999] EHLR 394, [1999] EGCS 69, CA.

Where the owner of any land is not also the occupier, separate notices may be served under the Prevention of Damage by Pests Act 1949 s 4 on both: s 4(1). As to the authentication and service of such notices see PARA 872. A notice under s 4 need only ensure the recipient knows from whom it is issued and that it is authentic: *Albon v Railtrack plc* [1998] EHLR 83, DC (notice signed on behalf of Assistant Chief Environmental Health Officer was valid).

7 Prevention of Damage by Pests Act 1949 s 4(2)(a).

8 Prevention of Damage by Pests Act 1949 s 4(2)(b).

9 Prevention of Damage by Pests Act 1949 s 4(2).

10 Prevention of Damage by Pests Act 1949 s 4(4).

11 See the Prevention of Damage by Pests Act 1949 s 4(5). The provisions of the Public Health Act 1936 s 290(3)-(5) apply to any notice served under the Prevention of Damage by Pests Act 1949 s 4 requiring the carrying out of any structural works as they apply to any such notice as is mentioned in the Public Health Act 1936 s 290(1); and ss 300-302 have effect accordingly: Prevention of Damage by Pests Act 1949 s 4(5). See also PARAS 126, 129-130.

12 lie under the Prevention of Damage by Pests Act 1949 s 4.

13 Prevention of Damage by Pests Act 1949 s 5(1). There is a penalty for obstruction: see s 22(4); and PARA 868. As to proceedings for the recovery of such expenses see PARA 871.

14 Prevention of Damage by Pests Act 1949 s 5(2). The penalty on summary conviction is a fine not exceeding level 3 on the standard scale: see s 5(2) (amended by virtue of the Criminal Justice Act 1982 ss 35, 37, 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to proceedings for offences see PARA 870.

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876. Groups of premises.

If it appears to a local authority¹ that rats or mice are found in substantial numbers on any land comprising premises in the occupation of different persons² and that it is expedient to deal with the land as one unit for the purpose of destroying rats or mice or keeping the land so far as practicable free from rats and mice, it may, without serving notices requiring steps to be taken³ on the occupiers or owners of the premises, itself take in relation to the land such steps as it considers necessary or expedient for that purpose⁴; but the steps so taken must not include the carrying out of any structural work⁵. Any expenses reasonably incurred by a local authority in taking such steps in relation to any land may be recovered by that authority from the several occupiers of the premises comprised in that land in such proportion as may be just, having regard to the cost of the work done on the several premises⁶.

1 As to the meaning of 'local authority' see PARA 99.

2 For these purposes, any premises which are unoccupied are deemed to be in the occupation of the owner; and the references in the Prevention of Damage by Pests Act 1949 s 6 to the occupier are to be construed accordingly: s 6(4). As to the meaning of 'owner' see PARA 116; definition applied by s 28(1). As to the meaning of 'owner' in relation to ships see PARA 873 note 8.

3 Ie under the Prevention of Damage by Pests Act 1949 s 4: see PARA 875.

4 Prevention of Damage by Pests Act 1949 s 6(1). Without prejudice to the provisions of s 22 (see PARA 866) requiring notice to be given before entry upon land, a local authority must, before taking any steps under s 6 in relation to any premises, give to the occupier at least seven days' notice of its intention to do so, specifying the steps proposed to be taken: s 6(2). There is a penalty for obstruction: see s 22(4); and PARA 868.

5 Prevention of Damage by Pests Act 1949 s 6(1) proviso.

6 Prevention of Damage by Pests Act 1949 s 6(3). As to the recovery of expenses see PARA 871.

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(v) Infestation of Food

877. Notice of infestation.

Every person whose business consists of or includes the manufacture¹, storage, transport or sale of food² must forthwith give notice in writing to the Secretary of State³ if he knows that any infestation⁴ is present⁵: (1) in any premises or vehicle or any equipment belonging to any premises or vehicle, used or likely to be used in the course of that business for the manufacture, storage, transport or sale of food⁶; or (2) in any food manufactured, stored, transported or sold in the course of that business, or in any other goods for the time being in his possession which are in contact or likely to come into contact with food so manufactured, stored, transported or sold⁷.

Every person whose business consists of or includes the manufacture, sale, repair or cleaning of containers⁸ must forthwith give notice in writing to the Secretary of State if it comes to his knowledge that infestation is present in any container for the time being in his possession which is to be used for the reception of food in the course of any business consisting of or including the manufacture, storage, transport or sale of food⁹.

Similarly, the master of a sea-going ship¹⁰, used or likely to be used for the transport of food¹¹, must give notice of any infestation by insects or mites present in his vessel¹²; and the person having the custody or control of any vessel which is not a sea-going ship must give notice of infestation by insects or mites present in the vessel when used or likely to be used for the transport or storage of food, or on or in equipment belonging to the vessel or in any food or other goods stored or carried in the vessel¹³.

Subject to any relaxation or exclusion of these requirements¹⁴, failure to comply with them is an offence¹⁵.

A person who gives notice under these requirements need not give notice of the same matters under the provisions requiring notification to local authorities of the presence of rats and mice¹⁶.

1 'Manufacture' includes processing: Prevention of Damage by Pests Act 1949 s 28(1).

2 As to the meaning of 'food' see PARA 866 note 16.

3 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to delegation of the Secretary of State's functions see PARA 863.

4 'Infestation' means the presence of rats, mice, insects or mites in numbers or under conditions which involve an immediate or potential risk of substantial loss of or damage to food; and 'infested' is to be construed accordingly: Prevention of Damage by Pests Act 1949 s 28(1). See also the Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 2(1); and the Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 2(1).

5 Prevention of Damage by Pests Act 1949 s 13(1).

6 Prevention of Damage by Pests Act 1949 s 13(1)(a).

7 Prevention of Damage by Pests Act 1949 s 13(1)(b).

8 'Container' includes sacks, boxes, tins and other similar articles: Prevention of Damage by Pests Act 1949 s 28(1). See also the Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 2(1).

9 Prevention of Damage by Pests Act 1949 s 13(2).

10 As to the meaning of 'sea-going ship' see PARA 861 note 5. These provisions apply also to hovercraft: Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1 Pt B (amended by SI 1978/1913; SI 1980/715; SI 1983/769; SI 1990/2594).

11 For these purposes, 'food' includes any substance ordinarily used in the composition or preparation of food, the seeds of any cereal or vegetable, and any feeding stuffs for animals, but does not include any food carried on any vessel for consumption by the passengers or crew: Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 2(1).

12 See the Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 8. The Secretary of State may grant exemption from this obligation subject to such conditions as he may think advisable: art 8 proviso.

13 See the Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 6(1). The Secretary of State, if he is satisfied that it is expedient so to do may on an application being made in that behalf, relax or exclude the requirement as to notice so far as it relates to infestation present in any such vessel or on or in any equipment belonging to such vessel, or in any food or other goods carried in the vessel, subject to such conditions as he may consider necessary to secure that all reasonable steps are taken to destroy infestation in the vessel or equipment before it is used for the carriage or storage of food or other goods likely to come into contact with food: art 6(1) proviso (i). When a notice has been given pursuant to this requirement in respect of food or goods, no person may, without the Secretary of State's consent, deliver, or cause to be delivered, such food or goods to any other vessel or premises until three working days thereafter: art 6(1) proviso (ii). The provisions of the Prevention of Damage by Pests Act 1949 s 13(2), (3) (see the text and note 9; and PARAS 878-879) do not apply to any vessel to which the Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 6 relates: art 6(2).

14 See the Prevention of Damage by Pests Act 1949 s 13(3); and PARAS 878-879. This does not apply in relation to certain ships: see note 13.

15 See the Prevention of Damage by Pests Act 1949 s 17; and PARA 869.

16 See the Prevention of Damage by Pests Act 1949 s 3(3); and PARA 874.

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CLEANSING, FUMIGATION AND DESTRUCTION OF PESTS/(2) DAMAGE BY PESTS/(v) Infestation of Food/878. Relaxation or exclusion of requirements as to notice.

878. Relaxation or exclusion of requirements as to notice.

The Secretary of State¹ may, after consultation with such associations or bodies, if any, as appear to him to be representative of persons affected, make regulations for relaxing or excluding the requirements as to giving notice of infestation² subject to such conditions (if any) as may be prescribed by or under the regulations³. Under this power, the requirements⁴ have been relaxed in respect of infestation with insects or mites of certain premises⁵ used for processing imported foods, or of any equipment belonging to such premises⁶. Nor is notice required of the infestation of certain foods⁷ with insects or mites⁸. A person carrying on the business of a carrier need not give notice of infestation of food or other goods⁹, when, in the course of that business, he carries for any other person any food or other goods which are infested with insects or mites, but of which he does not undertake the storage¹⁰.

1 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 I.e. the requirements of the Prevention of Damage by Pests Act 1949 s 13: see the text and note 3; and PARAS 877, 879. As to the meaning of 'infestation' see PARA 877 note 4.

3 Prevention of Damage by Pests Act 1949 s 13(3)(a).

4 I.e. the requirements of the Prevention of Damage by Pests Act 1949 s 13(1): see PARA 877.

5 I.e. premises wholly or mainly used for the processing of any of certain imported foods and fulfilling certain requirements in the production of flour or meal for human consumption, the manufacture of cereal breakfast foods, the distilling or malting of cereals, the cleaning or grinding of rice, the pearling of barley, the splitting of pulses, the extraction of oil, the production of starch or the production of animal provender or compound animal feeding stuffs: Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 3, Schedule Pt I. The imported foods and requirements referred to above are imported foods of any of certain kinds (namely cereals (including rice, millet, dari, sorghum and buckwheat), cereal products, pulses, oil seeds and other imported foods used in the production of animal provender or compound animal feeding stuffs) which are on any of the premises described in the Schedule Pt I for the purposes of the processes therein referred to and which, after discharge from the ship in which they were imported, have been moved direct to those premises from the port of entry without any storage or warehousing save such as is incidental to such movement: Schedule Pt II.

6 See the Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 3. Any person who, except for reg 3, would be required to give notice of infestation in such premises or equipment, must give notice in writing to the Secretary of State: (1) of infestation present in, or in any equipment belonging to, any part of the premises in which, after processing, any food or any by-product resulting from such processing is stored after processing (see reg 3 proviso (a)); (2) if he proposes to employ, for the purpose of remedying infestation in any premises to which reg 3 applies, any person carrying on business in the provision of services for keeping down or destroying insects or mites, of the name and address of the person to be employed and of the methods to be used (see reg 3 proviso (b)). If any vehicle, equipment, food or other goods to which these regulations apply are moved from England and Wales to Scotland or from Scotland to England and Wales any consent given, any relaxation of or exclusion from the requirements of the Prevention of Damage by Pests Act 1949 s 13 granted, or any prohibition or restriction on delivery imposed, by or under these regulations in respect of such vehicle, equipment, food or other goods in England and Wales or in Scotland, as the case may be, apply in like manner in respect of the aforesaid things in the country to which the things are moved as they would have in the country from which the things were moved: Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 8. However, they cease to apply to any premises, vehicle, equipment, food or other goods in respect of which the Secretary of State has given directions to any person under the Prevention of Damage by Pests Act 1949 s 14 (see PARA 880) for the period during which the directions are in operation: Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 10.

7 le (1) any foods described in and fulfilling the requirements of the Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, Schedule Pt II (see note 5) (reg 4(a)); (2) oil seeds which are being or have been moved from one extracting mill to another for the purposes of the extraction of oil (reg 4(b)); (3) fresh fruit or green vegetables, fresh home-killed meat, or fish other than cured or processed (reg 4(c)).

8 See the Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 4.

9 'Goods' includes containers: Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 2(1). As to the meaning of 'container' see PARA 877 note 8.

10 Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 6.

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879. Restrictions on delivery of food or goods.

After due consultation¹, the Secretary of State² may make regulations for prohibiting or restricting the delivery in the course of business of any food³ or other goods in respect of which notice of infestation is or is required⁴ to be given to him⁵. Under this power, with certain exceptions⁶, when any such notice has been given in respect of any food or other goods⁷, no person may, without the Secretary of State's consent, deliver them or cause them to be delivered from the premises in which they are situated to any other premises until a period of three working days⁸ from the date of notification has expired⁹. The Secretary of State may on application relax the requirements in respect of any particular vehicle or its equipment¹⁰ subject to such conditions as he may consider necessary to secure that all reasonable steps are taken to destroy infestation in the vehicle or equipment before it is used for the carriage of food or other goods likely to come into contact with food¹¹.

1 As to the consultation required see PARA 878.

2 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the meaning of 'food' see PARA 866 note 16.

4 Ie by the Prevention of Damage by Pests Act 1949 s 13: see the text to note 5; and PARAS 877-878.

5 Prevention of Damage by Pests Act 1949 s 13(3)(b).

6 If any obligation to give notice of infestation arises while the food or other goods are held temporarily in any transit shed or on any quay or in any similar place used for the working of traffic, and the required notice is given, the food or other goods may be delivered forthwith to any other premises; but if, after the delivery, the food or other goods remain under the control of the person giving notice of infestation, he may not, without the consent of the Secretary of State, move or permit the food or other goods to be moved from such other premises until a period of three working days from the date of delivery to such premises has expired: Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 5 proviso (a). Empty infested containers may at any time be delivered to other premises for treatment of the infestation: reg 5 proviso (b). As to the meaning of 'infestation' see PARA 877 note 4.

7 As to the meaning of 'goods' see PARA 878 note 9.

8 'Working days' includes any day except Sunday, a bank holiday, Christmas Day or Good Friday: Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 2(1).

9 Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 5. As to the application of the regulations see PARA 878 note 6.

10 Ie the requirements under the Prevention of Damage by Pests Act 1949 s 13: see the text to note 5; and PARAS 877-878.

11 See the Prevention of Damage by Pests (Infestation of Food) Regulations 1950, SI 1950/416, reg 7.

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880. Directions for preventing or mitigating infestation.

Where he is satisfied¹ that it is necessary to do so for preventing or mitigating damage to food², the Secretary of State³ may give such directions⁴ as he thinks expedient⁵. Such directions may be given to any person whose business consists of or includes the manufacture⁶, storage, transport or sale of food: (1) prohibiting or restricting the use, for the manufacture, storage, transport or sale of food in the course of that business, of any premises or vehicle, or any equipment belonging to any premises or vehicle, which is or is likely to become infested⁷; (2) prohibiting or restricting the acceptance, delivery, retention or removal in the course of that business of any infested food or of any other infested goods which are likely to come into contact with food so manufactured, stored, transported or sold⁸; or (3) requiring the carrying out, within such time as may be specified in the directions, of any structural works or application of any form of treatment being works or treatment appearing to the Secretary of State to be necessary for preventing or remedying infestation in such premises, vehicles, equipment, food or goods⁹. This provision applies to vessels (including hovercraft)¹⁰ with some modifications¹¹. Similarly, directions may be given to any person whose business consists of or includes the manufacture, sale, repair or cleansing of containers¹², requiring the treatment of any infested container, or any infested premises in which the business is carried on, in such a manner as may be specified in the directions, and prohibiting the removal of any such container until it has been so treated¹³.

Where the Secretary of State is satisfied that any food or container in the possession of a person carrying on any such business as is mentioned above is so infested that the infestation cannot reasonably be remedied by any form of treatment, he may give directions to that person requiring him to destroy it within such a time and by such means as may be specified in the directions¹⁴.

Any directions requiring the carrying out of structural works or the destruction of any food container must include a statement of the right of appeal¹⁵ and of the time within which the appeal must be brought¹⁶.

¹ I.e. whether in consequence of a notice under the Prevention of Damage by Pests Act 1949 s 13 (see PARAS 877-879) or otherwise: see s 14(1).

² As to the meaning of 'food' see PARA 866 note 16.

³ As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

⁴ I.e. under the Prevention of Damage by Pests Act 1949 s 14(2)-(4): see the text and notes 6-15.

⁵ Prevention of Damage by Pests Act 1949 s 14(1). This power operates without prejudice to any regulations made under s 13(3) (see PARAS 878-879): s 14(1).

⁶ As to the meaning of 'manufacture' see PARA 877 note 1.

⁷ Prevention of Damage by Pests Act 1949 s 14(2)(a). As to the meaning of 'infested' see PARA 877 note 4.

⁸ Prevention of Damage by Pests Act 1949 s 14(2)(b).

⁹ Prevention of Damage by Pests Act 1949 s 14(2)(c).

10 See PARA 877 note 10.

11 Directions may be given to the owner or other person having the custody or control of any vessel which is not a sea-going ship and which is used or likely to be used for the transport of food in respect of any such vessel, any equipment belonging to it and any food or other goods stored or carried or to be stored or carried on it for any of the purposes mentioned in the Prevention of Damage by Pests Act 1949 s 14(2) (see the text and notes 6-9): Prevention of Damage by Pests (Application to Shipping) Order 1951, SI 1951/967, art 7. As to the meaning of 'sea-going ship' see PARA 861 note 5. As to the meaning of 'food' see PARA 866 note 16. Such directions may be given to the owner or master of a sea-going ship: (1) prohibiting or restricting the use for the transport of food of the vessel, or any equipment belonging to the vessel, which is infested by insects or mites (art 9(a)); (2) restricting the delivery or removal from the vessel or requiring the discharge at ship's rail in such manner as to facilitate treatment to remedy the infestation of any infested food or of any other infested goods which are likely to come into contact with food (art 9(b)); (3) requiring the application, within such time as may be specified in the directions, of any form of treatment, being treatment appearing to the Secretary of State to be necessary for preventing or remedying infestation in any such vessel, equipment, food or other goods (art 9(c)). No requirements for structural works apply to any kind of vessel: art 3(1) proviso.

12 As to the meaning of 'container' see PARA 877 note 8.

13 Prevention of Damage by Pests Act 1949 s 14(3).

14 Prevention of Damage by Pests Act 1949 s 14(4).

15 Ie under the Prevention of Damage by Pests Act 1949 s 15: see PARA 881.

16 Prevention of Damage by Pests Act 1949 s 15(3). As to the time for appealing see PARA 881.

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881. Appeal against directions.

Where directions are given requiring the carrying out of any structural works or the destruction of any food or container¹, any person who is aggrieved² may appeal to a court of summary jurisdiction³: (1) in the case of directions requiring the carrying out of any structural works, within 21 days from the service of the directions⁴; and (2) in the case of directions requiring the destruction of any food or container, within seven days from the service of the directions⁵. Upon any such appeal the court, if it is satisfied that the directions are for any reason invalid or that any requirement of them is excessive or unreasonable, may quash or amend the directions, as the case may be, but otherwise it must dismiss the appeal⁶. A further appeal lies to the Crown Court in respect of directions requiring the carrying out of structural works⁷.

1 The directions under the Prevention of Damage by Pests Act 1949 s 14: see PARA 880. As to the meaning of 'food' see PARA 866 note 16. As to the meaning of 'container' see PARA 877 note 8.

2 As to persons aggrieved see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 66.

3 Prevention of Damage by Pests Act 1949 s 15(1) (amended by the Courts Act 2003 Sch 8 para 84(1), (2), Sch 10).

4 Prevention of Damage by Pests Act 1949 s 15(1)(a).

5 Prevention of Damage by Pests Act 1949 s 15(1)(b).

6 Prevention of Damage by Pests Act 1949 s 15(2). If and so far as the appeal is based on the ground of some informality, defect or error in or in connection with the directions, the court must dismiss the appeal if satisfied that the informality, defect or error was not material: s 15(2) proviso.

7 Prevention of Damage by Pests Act 1949 s 15(4) (amended by the Courts Act 1971 Sch 9 Pt I). As to the Crown Court see **COURTS** vol 10 (Reissue) PARA 621 et seq.

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882. Failure to comply with directions.

Any person who fails to comply with any directions¹ relating to infestation given by the Secretary of State² is guilty of an offence³.

Subject to the right to appeal against the directions⁴, if any person to whom directions are given⁵ fails to comply with any requirement of them within the period prescribed by them, then, without prejudice to any proceedings which may be taken against him in respect of an offence⁶, the Secretary of State may by order authorise a named person to take, on behalf of the person in default, such steps as the Secretary of State considers necessary for securing compliance with the requirement⁷. The amount of any expenses reasonably incurred by a person authorised in carrying out works may be recovered by the Secretary of State from the person in default⁸.

1 Ie any directions given under the Prevention of Damage by Pests Act 1949 s 14: see PARA 880.

2 As to the Secretary of State see PARA 58. As to the transfer of functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 See the Prevention of Damage by Pests Act 1949 s 17; and PARA 869.

4 Ie under the Prevention of Damage by Pests Act 1949 s 15: see PARA 881.

5 Ie under the Prevention of Damage by Pests Act 1949 s 14: see PARA 880.

6 Ie under the Prevention of Damage by Pests Act 1949 Pt II (ss 13-17).

7 Prevention of Damage by Pests Act 1949 s 16(1). There is a penalty for obstruction: see s 22(4); and PARA 868.

8 Prevention of Damage by Pests Act 1949 s 16(2). In proceedings for the recovery of these expenses it is not open to the defendant to raise by way of defence any question which he could have raised on an appeal under s 15: s 16(3).

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(vi) Pigeons and Other Birds

883. Nuisance, annoyance or damage by birds.

A local authority¹ may take any steps for the purpose of abating or mitigating any nuisance, annoyance or damage caused by the congregation in any built-up area of house doves, pigeons, starlings or sparrows². All reasonable precautions must be taken to ensure that the seizure and destruction of any birds are carried out humanely³. When acting under this power, the law of theft⁴ does not prevent the local authority from taking reasonable steps to seize, destroy, sell or otherwise dispose of any house doves or pigeons which in its belief have no owner⁵.

1 As to the meaning of 'local authority' see PARA 99.

2 Public Health Act 1961 s 74(1). The existence of this power does not imply a duty on local authorities to abate a nuisance caused by birds at public expense: see *Wandsworth London Borough Council v Railtrack plc* [2001] EWCA Civ 1236, [2002] QB 756, [2001] Env LR 441 (local authority entitled to bring public nuisance claim notwithstanding existence of statutory power). As to bird protection legislation generally see PARAS 18, 54; **ANIMALS** vol 2 (2008) PARAS 994, 1006; **OPEN SPACES AND COUNTRYSIDE**.

3 Public Health Act 1961 s 74(3). Nothing in s 74 authorises a local authority to do anything in contravention of the Wildlife and Countryside Act 1981 Pt I (ss 1-27) (see **ANIMALS** vol 2 (2008) PARA 994 et seq): Public Health Act 1961 s 74(4) (amended by the Wildlife and Countryside Act 1981 ss 72(6), 73(4)).

4 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282 et seq.

5 Public Health Act 1961 s 74(2).

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17. PREVENTION AND CONTROL OF DISEASE

(1) IN GENERAL

884. Introduction.

This part of the title deals with the provisions enacted for controlling the spread of infectious disease¹ and securing the treatment of persons suffering from it, and the powers of local authorities in this regard². The general provision of hospitals and medical treatment under the national health service, the functions of health authorities and the availability of local health services³ are considered elsewhere in this work, as are the health functions⁴ of local social service authorities⁵. The control of drugs, poisons and medicines⁶, the law governing the medical, nursing and pharmaceutical professions⁷ and the supervision of nursing homes or residential care homes⁸ are also considered elsewhere in this work.

1 Certain provisions relating to the prevention and control of specific diseases (eg AIDS, anthrax, bovine spongiform encephalopathy, rabies) are dealt with elsewhere in this work: see eg **ANIMALS**; **FOOD**; **MEDICAL PROFESSIONS**; **MEDICINAL PRODUCTS AND DRUGS**; **HEALTH SERVICES**. As to the relaxation of the provisions relating to quarantine of animals see **ANIMALS** vol 2 (2008) PARA 1055.

2 See PARA 885 et seq. It should be noted that at the date at which this volume states the law in the main statute in this area (ie the Public Health (Control of Disease) Act 1984) Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 and there are a number of other related prospective changes. The Public Health (Control of Disease) Act 1984 Pts II and V are superseded by Pt IIA (ss 45A-45T) which is added by the Health and Social Care Act 2008 s 129. At the date at which this volume states the law the Public Health (Control of Disease) Act 1984 Pt IIA is not fully in force nor has all relevant subordinate legislation been made: generally Pt IIA is in force from 21 July 2008 in so far as it confers power to make subordinate legislation and in some cases from 1 April 2009 in regard to England: see the Health and Social Care Act 2008 s 170; and the Health and Social Care Act 2008 (Commencement No 9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009, SI 2009/462, art 3. As to the prospectively repealed provisions of the Public Health (Control of Disease) Act 1984 Pts II and V see PARAS 885-917, 933-956, 959, 964 and as to the provisions of Pt IIA see PARA 918 et seq. See also PARAS 958, 966-971.

3 See **HEALTH SERVICES**. As to medical inspections in schools see **EDUCATION**. As to restrictions on advertisements relating to the treatment of cancer and certain other diseases, and advertisements relating to medicinal products, see **MEDICAL PROFESSIONS**. vol 30(1) (Reissue) PARA 219 et seq; **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 157 et seq.

4 Ie functions in relation to the care of mothers and young children, the prevention of illness, the provision of home help and laundry facilities, and care and after-care under the National Health Service Act 1977 s 21, Sch 8: see **HEALTH SERVICES**; **SOCIAL SERVICES AND COMMUNITY CARE**.

5 See **HEALTH SERVICES**; **SOCIAL SERVICES AND COMMUNITY CARE**.

6 See **MEDICINAL PRODUCTS AND DRUGS**.

7 See **MEDICAL PROFESSIONS**.

8 See **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1042 et seq.

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885. General control under regulations.

Until a day to be appointed¹, the Secretary of State² may make regulations³ with a view to the treatment of persons affected with any epidemic, endemic or infectious disease, and for preventing the spread of such diseases⁴. The regulations must specify the authorities, whether county councils⁵, county borough councils, local authorities⁶, port health authorities⁷, strategic health authorities, local health boards, special health authorities, primary care trusts, National Health Service trusts or NHS foundation trusts⁸ by whom they are to be enforced and executed⁹. The regulations may also provide for their enforcement and execution by officers of Her Majesty's Revenue and Customs¹⁰, but, in so far as they apply to such officers, the regulations must require the consent of the Commissioners for Her Majesty's Revenue and Customs¹¹. Authorised officers¹² of any such authority as is specified by the regulations¹³ and officers of Her Majesty's Revenue and Customs¹⁴ have power to enter any premises¹⁵, vessel¹⁶ or aircraft for the purpose of executing or superintending the execution of the regulations¹⁷.

Any person who wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any such regulations is, in a case where no provision is made in the regulations for his punishment, liable on summary conviction to a fine¹⁸.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) and s 76 are prospectively repealed by the Health and Social Care Act 2008 ss 130(1), Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 The power to make regulations is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: Public Health (Control of Disease) Act 1984 s 13(6) (prospectively repealed). See note 1. The power to make regulations is exercisable as respects the whole or any part of England and Wales, including coastal waters: see s 13(1) (prospectively repealed). As to the meaning of 'coastal waters' see PARA 1 note 34. The Public Health (Control of Disease) Act 1984 does not extend to Scotland or to Northern Ireland: see s 79(3).

Her Majesty may by Order in Council direct that:

158 (1) regulations made under s 13, other than regulations for purposes mentioned in s 13(1)(a) (see the text and note 4) that will be operative on land;

159 (2) regulations made under s 13 as it has effect by virtue of s 14 (see notes 9, 11, 13) in relation to aerodromes vested in or under the control of the Secretary of State,

are to extend to the Isle of Man or any of the Channel Islands with such modifications, additions and omissions as may be specified in the order: s 76(1) (prospectively repealed). See note 1. For the purposes of such an order, ss 13(5), 15 are deemed to form part of the regulations: s 76(2) (prospectively repealed).

Amongst the regulations made under the Public Health (Control of Disease) Act 1984 s 13 are the Public Health (Aircraft) Regulations 1979, SI 1979/1434 (see PARA 933 et seq); the Public Health (Ships) Regulations 1979, SI 1979/1435 (see PARA 933 et seq); the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546 (see PARAS 893 et seq, 910 et seq); and the Health Protection (Notification) Regulations 2010, SI 2010/659 (see also PARAS 920, 921). See also note 4.

4 Public Health (Control of Disease) Act 1984 s 13(1)(a) (prospectively repealed). See note 1. The Secretary of State may by any such regulations apply, with or without modifications, to any disease to which the

regulations relate any enactment (including any enactment in the Public Health (Control of Disease) Act 1984) relating to the notification of disease or to notifiable diseases: s 13(2) (prospectively repealed). As to regulations made or having effect as if made under s 13 in relation to infectious diseases see PARA 893 et seq; and as to such regulations in relation to the prevention of tuberculosis see PARA 912. As to regulations concerning vessels and aircraft see PARA 933 et seq; and as to regulations concerning international trains see PARA 950 et seq.

5 If the Secretary of State so directs, any expenses incurred by a county council under the Public Health (Control of Disease) Act 1984 s 13 are to be defrayed as special expenses charged on such part of the county as may be provided by the order, but such an order may be revoked or varied by a subsequent order: s 13(7) (prospectively repealed). See note 1.

6 As to the meaning of 'local authority' see PARA 99. 'District', in relation to a local authority in Greater London, means a London borough, the City of London, the Inner Temple or the Middle Temple and, in relation to a local authority in Wales, means a county or county borough: Public Health (Control of Disease) Act 1984 s 74 (definition amended by the Local Government (Wales) Act 1994 Sch 9 para 13). This definition is prospectively substituted by the Health and Social Care Act 2008 Sch 11 paras 1, 29 with a new definition as follows: 'district' means: (1) in relation to a local authority in Greater London, a London borough, the City of London, the Inner Temple or the Middle Temple; (2) in relation to a local authority in England for an area for which there is no district council, that area; (3) in relation to a local authority in Wales, a county or county borough; (4) in relation to the Council of the Isles of Scilly, those Isles. At the date at which this volume states the law the substituted definition is only in force in so far as power is conferred for the purposes of making subordinate legislation.

7 As to port health authorities see PARA 102.

8 As to these authorities see **HEALTH SERVICES**.

9 Public Health (Control of Disease) Act 1984 s 13(4)(a) (amended by the Local Government (Wales) Act 1994 Sch 9 para 13(2); the Health Authorities Act 1995 Sch 1 para 108; the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 para 61; SI 2000/90; SI 2002/2469; and SI 2007/961) (prospectively repealed). See note 1. In relation to aerodromes for the time being vested in or under the control of the Secretary of State and aerodromes owned or managed by the Civil Aviation Authority, and in relation to persons and aircraft arriving at or departing from any such aerodromes, the Public Health (Control of Disease) Act 1984 s 13(4)(a) has effect as if it were substituted so that the regulations may provide for their enforcement and execution by officers designated for that purpose by the Secretary of State: see s 14(1)(a) (s 14(1) amended by the Airports Act 1986 Sch 6 Pt I) (prospectively repealed). In the Public Health (Control of Disease) Act 1984 s 14 'aerodrome' has the meaning given by the Civil Aviation Act 1982 (see **AIR LAW** vol 2 (2008) PARA 175): Public Health (Control of Disease) Act 1984 s 14(2) (prospectively repealed). As to the Civil Aviation Authority see **AIR LAW** vol 2 (2008) PARA 50 et seq.

10 Public Health (Control of Disease) Act 1984 s 13(4)(b) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)) (prospectively repealed). See note 1. As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

11 Public Health (Control of Disease) Act 1984 s 13(4) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)) (prospectively repealed). See note 1. The consent of the Commissioners for Her Majesty's Revenue and Customs is not required in relation to aerodromes for the time being vested in or under the control of the Secretary of State or to aerodromes owned or managed by the Civil Aviation Authority: see s 14(1)(b) (as amended (see note 9); and further amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)) (prospectively repealed).

12 In the Public Health (Control of Disease) Act 1984, unless the context otherwise requires, 'authorised officer', in relation to a local authority, means: (1) an officer of the authority authorised by it in writing, either generally or specially, to act in matters of a specified kind or in a specified manner; or (2) by virtue of his appointment and for the purpose of matters within his province, a proper officer of the authority, appointed for purposes corresponding to any of those of the former medical officers of health, surveyors and sanitary inspectors: s 74. As to the meaning of 'proper officer' see PARA 889 note 3.

13 Public Health (Control of Disease) Act 1984 s 13(5)(a) (prospectively repealed). See note 1. In relation to aerodromes for the time being vested in or under the control of the Secretary of State and aerodromes owned or managed by the Civil Aviation Authority, and in relation to persons and aircraft arriving at or departing from any such aerodromes, s 13(5)(a) has effect as if it were substituted so that it referred to officers designated in accordance with s 13(4)(a) (as modified by s 14(1)(a)) (see note 9): see s 14(1)(c) (as amended: see note 9) (prospectively repealed).

14 Public Health (Control of Disease) Act 1984 s 13(5)(b) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)) (prospectively repealed). See note 1.

15 As to the meaning of 'premises' see PARA 1 note 34.

16 As to the meaning of 'vessel' see PARA 1 note 33.

17 Public Health (Control of Disease) Act 1984 s 13(5) (prospectively repealed). See note 1.

18 Public Health (Control of Disease) Act 1984 s 15 (prospectively repealed). See note 1. The penalty is a fine not exceeding level 5 on the standard scale and, in the case of a continuing offence, a further fine not exceeding £50 for every day on which the offence continues after conviction: see s 15 (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. Mens rea is a necessary element in such an offence; the defendant must at any rate know the circumstances which will constitute the offence: *Bullock v Turnbull* [1952] 2 Lloyd's Rep 303, DC. See also PARA 936.

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886. Enforcement of regulations relating to infectious diseases.

The regulations relating to infectious diseases¹ must be enforced and executed: (1) in the district of a local authority², by the local authority³; and (2) in a port health district⁴, by the port health authority so far as the regulations are in terms applicable to it⁵.

Every local authority must send to any medical practitioner who after due inquiry is ascertained to be practising in its district a copy of the regulations⁶ and of the relevant provisions⁷ of the Public Health (Control of Disease) Act 1984⁸.

1 Ie the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546. They are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

2 As to the meaning of 'local authority' see PARA 99; and as to the meaning of 'district' see PARA 885 note 6.

3 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 13(1)(a). See also note 5.

4 'Port health district' means the district of a port health authority: reg 2(1). 'Port health authority' means a port health authority constituted by an order made, or having effect as made, by the Secretary of State under the Public Health (Control of Disease) Act 1984 s 2 (see PARA 102), and includes the port health authority for the Port of London as constituted under s 7 (see PARA 103): Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 2(1). As to port health authorities and port health districts see PARA 102. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

5 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 13(1)(b). As the regulations do not provide for penalties, the general provisions of the Public Health (Control of Disease) Act 1984 s 15 apply: see PARA 885.

6 Ie the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546.

7 Ie the Public Health (Control of Disease) Act 1984 ss 10, 11: see PARAS 893-894.

8 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 13(2).

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887. Compensation.

Until a day to be appointed¹, a local authority² must make full compensation to any person who has sustained damage by reason of the exercise by the authority, in relation to a matter as to which the person has not himself been in default, of any of its powers under a relevant provision³ of the Public Health (Control of Disease) Act 1984⁴.

1 The Public Health (Control of Disease) Act 1984 s 57 is prospectively repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 12, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'local authority' see PARA 99.

3 I.e. a provision of the Public Health (Control of Disease) Act 1984, other than s 46 (see PARA 900; and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 920): s 74. As from a day to be appointed, this definition (ie 'relevant provision') is revised to include the words 'including a provision in regulations under the Act': s 74 (definition prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 29). At the date at which this volume states the law this revision is in force only in regard to the power to make subordinate legislation.

4 Public Health (Control of Disease) Act 1984 s 57(1) (prospectively repealed). See note 1. Section 57(1) does not affect the discretion of a local authority under s 31(4) (see PARA 889) in a case to which that provision applies: see s 57(1) (as so prospectively repealed).

Subject to s 57(3), any dispute arising under s 57 as to the fact of damage, or as to the amount of compensation, must be determined by arbitration: s 57(2) (prospectively repealed). If the compensation claimed does not exceed £50, all questions as to the fact of damage, liability to pay compensation and the amount of compensation may, on the application of either party, be determined by, and any compensation awarded may be recovered before, a magistrates' court: s 57(3) (prospectively repealed). In an arbitration under these provisions, the reference must be to a single arbitrator appointed by agreement between the parties or, in default of agreement, by the Secretary of State: s 57(4) (prospectively repealed). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

As to compensation under the Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, see PARA 912.

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(2) PREVENTION AND TREATMENT

888. Disinfecting stations.

Until a day to be appointed¹, a local authority² has discretionary power to provide a disinfecting station, and may cause any article brought there to be disinfected free of charge³.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'local authority' see PARA 99.

3 Public Health (Control of Disease) Act 1984 s 27 (prospectively repealed). See note 1. As to the purification of filthy and dangerous articles see further PARA 889 et seq.

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889. Cleansing and disinfecting premises and articles.

Until a day to be appointed¹, if a local authority² is satisfied, on a certificate of its proper officer³, that the cleansing and disinfection of any premises⁴, and the disinfection or destruction of any articles there likely to retain infection, would tend to prevent the spread of any infectious disease, the authority must give notice to the occupier (or, in the case of unoccupied premises, the owner⁵) that it will at his cost: (1) clean and disinfect the premises; and (2) disinfect or, as the case may require, destroy any such articles, unless, within 24 hours after the receipt of the notice, he informs the authority that within a time fixed by the notice he will take such steps as are specified in it⁶. If the person to whom the notice is given does not so inform the authority within 24 hours after receipt of the notice or, having so informed the authority, fails to take the specified steps to the satisfaction of the proper officer within the time fixed by the notice, then the authority may cause the premises to be cleansed and disinfected and the articles to be disinfected or destroyed, as the case may require⁷. The authority may, if it thinks fit, recover from that person the expenses reasonably incurred by it in doing this, and any such expenses may be recovered as a simple contract debt in any court of competent jurisdiction⁸. Where the occupier of any premises (or, in the case of unoccupied premises, the owner) is, in the opinion of the local authority, unable effectually to take such steps as it considers necessary, the authority may, without giving such notice but with his consent, take the necessary steps at its own cost⁹.

Where an authority has disinfected any premises or article or destroyed any article under these provisions, it may if it thinks fit pay compensation to any person who has suffered damage by its action¹⁰.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'local authority' see PARA 99.

3 'Proper officer' means, in relation to a purpose and to an authority, an officer appointed for that purpose by that authority: Public Health (Control of Disease) Act 1984 s 74. It is now the usual practice to appoint the community physician appointed as such by the health authority (see **HEALTH SERVICES**) as the proper officer for purposes such as this, although for some such purposes the chief environmental health officer employed by the local authority itself might be appointed as the proper officer. The matter is entirely within the discretion of the local authority: as to proper officers and their appointment generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 431.

4 As to the meaning of 'premises' see PARA 1 note 34.

5 For the purposes of the Public Health (Control of Disease) Act 1984 s 31, the owner of unoccupied premises is deemed to be in occupation of them: s 31(5) (prospectively repealed). See note 1. In the Public Health (Control of Disease) Act 1984, unless the context otherwise requires, 'owner' means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as an agent or trustee for any other person, or who would so receive the rackrent if those premises were let at a rackrent: s 74. 'Rackrent', in relation to any property, means a rent which is not less than two-thirds of the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and deducting from it the probable average annual cost of the repairs, insurance and other expenses (if any) necessary to maintain the property in a state to command such a rent: s 74.

- 6 Public Health (Control of Disease) Act 1984 s 31(1) (prospectively repealed). See note 1. An officer cannot act without proper authority from the council: *Garlick v Knottingley UDC* (1904) 68 JP 494, DC.
- 7 Public Health (Control of Disease) Act 1984 s 31(2) (prospectively repealed). See note 1.
- 8 See the Public Health (Control of Disease) Act 1984 s 31(2) (prospectively repealed). See note 1.
- 9 Public Health (Control of Disease) Act 1984 s 31(3) (prospectively repealed). See note 1.
- 10 Public Health (Control of Disease) Act 1984 s 31(4) (prospectively repealed). See note 1.

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890. Removal of persons to temporary accommodation.

Until a day to be appointed¹, when any infectious disease occurs in a house², or the local authority³ deems it necessary to disinfect any house, the authority may, on a certificate of the proper officer of the local authority for the district⁴: (1) cause any person who is not himself sick and who consents to leave the house (or whose parent or guardian, where the person is a child, consents to his leaving the house) to be removed to any temporary shelter or house accommodation provided by the authority⁵; or (2) cause any such person to be so removed without any consent, if a justice of the peace⁶ is satisfied, on the application of the authority, of the necessity for the removal and makes an order for the removal, subject to such conditions, if any, as may be specified in the order⁷. The removal must be effected, and the conditions of any order must be satisfied, without charge to the person removed (or to the parent or guardian of that person)⁸.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'house' see PARA 1 note 34.

3 As to the meaning of 'local authority' see PARA 99.

4 As to the meaning of 'proper officer' see PARA 889 note 3.

5 Public Health (Control of Disease) Act 1984 s 32(1)(a) (prospectively repealed). See note 1. A local authority may provide temporary shelter or house accommodation for these purposes: s 32(3) (prospectively repealed).

6 The justice of the peace may, if he deems it necessary, act in the absence of the person concerned: see the Public Health (Control of Disease) Act 1984 s 32(1)(b) (prospectively repealed). See note 1.

7 Public Health (Control of Disease) Act 1984 s 32(1)(b) (prospectively repealed). See note 1.

8 Public Health (Control of Disease) Act 1984 s 32(2) (prospectively repealed). See note 1.

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891. Instruction about health or disease.

Until a day to be appointed¹, the council of a non-metropolitan county² or a local authority³ may arrange for the publication within its area of information on questions relating to health or disease, and for the delivery of lectures and the display of pictures or cinematograph films in which such questions are dealt with⁴.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to non-metropolitan counties see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24.

3 As to the meaning of 'local authority' see PARA 99.

4 Public Health (Control of Disease) Act 1984 s 54 (prospectively repealed). See note 1. The council of the non-metropolitan county or the local authority may defray the whole or part of the expenses incurred for any of these purposes: s 54 (prospectively repealed).

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892. Rag collectors and dealers.

Until a day to be appointed¹, no person who collects or deals in rags, old clothes or similar articles, and no person assisting or acting on his behalf, may, in or from a shop or premises² used for or in connection with the business of a dealer in any such articles, or while engaged in collecting any such articles, sell or deliver (whether gratuitously or not) any article of food or drink to any person, or any article whatsoever (including any animal, fish, bird or other living thing³) to a person under the age of 14 years⁴. A person who contravenes any of these provisions is liable to a penalty⁵.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'premises' see PARA 1 note 34.

3 Public Health (Control of Disease) Act 1984 s 55(2) (prospectively repealed). See note 1.

4 Public Health (Control of Disease) Act 1984 s 55(1) (prospectively repealed). See note 1.

5 Public Health (Control of Disease) Act 1984 s 55(3) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 55(3) (prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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(3) NOTIFIABLE DISEASES

(i) Notification

893. Diseases which must be notified.

Until a day to be appointed¹, the Public Health (Control of Disease) Act 1984 defines a notifiable disease as any of the following diseases: cholera, plague, relapsing fever, smallpox and typhus². However, the general power of the Secretary of State³ to make regulations⁴ includes power to apply any enactment relating to the notification of disease or to notifiable diseases, with or without modifications, to any disease to which the regulations relate⁵.

A local authority may by order direct that an infectious disease other than one specified in the Public Health (Control of Diseases) Act 1984⁶ or one to which regulations⁷ relate is to be deemed to be a notifiable disease, for the purpose of the application to its district of such of the provisions of the Public Health (Control of Diseases) Act 1984 relating to notifiable diseases as are specified in the order⁸. An order generally has no effect until it has been approved by the Secretary of State and duly advertised⁹, although an exception is made for a temporary order made in an emergency¹⁰.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 Public Health (Control of Disease) Act 1984 ss 10, 74 (s 10 prospectively repealed). See note 1. The definition of 'notifiable disease' in s 74 is also prospectively repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 29, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed.

3 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 See the Public Health (Control of Disease) Act 1984 s 13; and PARA 885.

5 See the Public Health (Control of Disease) Act 1984 s 13(2); and PARA 885. Different provisions of the Public Health (Control of Disease) Act 1984 apply to different diseases or groups of diseases: see the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 3, Sch 1.

The provisions of the Public Health (Control of Disease) Act 1984 ss 35, 37, s 38 (as modified), ss 43, 44 are applied to acquired immune deficiency syndrome: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1. In its application to acquired immune deficiency syndrome, the Public Health (Control of Disease) Act 1984 s 38(1) applies so that a justice of the peace (acting if he deems it necessary in the absence of the person concerned) may on the application of any local authority make an order for the detention in hospital of an inmate of that hospital suffering from acquired immune deficiency syndrome, in addition to the circumstances specified in s 38(1), if the justice is satisfied that on his leaving the hospital proper precautions to prevent the spread of that disease would not be taken by him in his lodging or accommodation, or in other places to which he may be expected to go if not detained in the hospital: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 5. As to the meaning of 'local authority' see PARA 99. As to the meaning of 'hospital' see PARA 900 note 2.

The provisions of the Public Health (Control of Disease) Act 1984 ss 11, 12, ss 17-24, ss 26, 28-30, 33-35, s 37, ss 38, 44, 45 are applied to acute encephalitis, acute poliomyelitis, meningitis and meningococcal septicaemia (without meningitis): Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1.

The provisions of the Public Health (Control of Disease) Act 1984 ss 11, 12, ss 17-24, ss 26, 28-30, 33-35 (s 35 as modified), ss 37, 38, 43-45 are applied to anthrax: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1.

The provisions of the Public Health (Control of Disease) Act 1984 ss 11, 12, ss 17-24, ss 26, 28-30, 33-38, ss 44, 45 are applied to diphtheria, dysentery (amoebic or bacillary), paratyphoid fever, typhoid fever and viral hepatitis: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1.

The provisions of the Public Health (Control of Disease) Act 1984 ss 11, 12, ss 17, 19-21, ss 28-30, 35 (as modified), s 37, ss 38, 44 are applied to leprosy: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1.

The provisions of the Public Health (Control of Disease) Act 1984 ss 11, 12, ss 17-22, ss 24, 26, 28-30, 33-35 (as modified), ss 37, 38, 44, 45 are applied to leptospirosis, measles, mumps, rubella and whooping cough: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1.

The provisions of the Public Health (Control of Disease) Act 1984 ss 11, 12, ss 18, 35 (as modified) are applied to malaria, tetanus and yellow fever: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1.

The provisions of the Public Health (Control of Disease) Act 1984 ss 11, 12, ss 17, 24, 26 are applied to ophthalmia neonatorum: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1. 'Ophthalmia neonatorum' means a purulent discharge from the eyes of an infant, commencing within 21 days from the date of birth: reg 2(1).

The provisions of the Public Health (Control of Disease) Act 1984 ss 11, 12, ss 17-26, ss 28-30, 32-38 are applied to rabies: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1.

The provisions of the Public Health (Control of Disease) Act 1984 ss 11, 12, ss 17-22, ss 24, 26, 28-30, 33-38, ss 44, 45 are applied to scarlet fever: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1.

The provisions of the Public Health (Control of Disease) Act 1984 s 12, ss 17-24, ss 26, 28-30, 35 (as modified), ss 44, 45 are applied to tuberculosis: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1. In addition, the Public Health (Control of Disease) Act s 11 applies where the opinion of the registered medical practitioner that a person is suffering from tuberculosis is formed from evidence not derived solely from tuberculin tests: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1. As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4. The provisions of the Public Health (Control of Disease) Act 1984 ss 25, 37, 38 are applied to tuberculosis of the respiratory tract in an infectious state: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1. As to tuberculosis of the respiratory tract see further PARA 912.

The provisions of the Public Health (Control of Disease) Act 1984 ss 11, 12, ss 17-38, ss 43-45, 48 are applied to viral haemorrhagic fever: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 1. 'Viral haemorrhagic fever' means Argentine haemorrhagic fever (Junin), Bolivian haemorrhagic fever (Machupo), Chikungunya haemorrhagic fever, Congo/Crimean haemorrhagic fever, Dengue fever, Ebola virus disease, haemorrhagic fever with renal syndrome (Hantaan), Kyasanur forest disease, Lassa fever, Marburg disease, Omsk haemorrhagic fever, and Rift Valley disease: reg 2(1).

Where in Sch 1 reference is made to the Public Health (Control of Disease) Act 1984 s 35 (as modified), that provision does not apply to a person merely carrying an organism capable of causing the disease specified: see the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 4; and PARA 896.

6 le specified in the Public Health (Control of Disease) Act 1984 s 10: see the text and note 2.

7 le regulations made under the Public Health (Control of Disease) Act 1984 s 13: see the text and notes 3-5.

8 Public Health (Control of Disease) Act 1984 s 16(1) (prospectively repealed). See note 1. An order made under s 16 may be varied or revoked by an order made and approved in the like manner as the original order: s 16(7) (prospectively repealed).

9 Public Health (Control of Disease) Act 1984 s 16(2) (prospectively repealed). See note 1. When an order has been approved by the Secretary of State, the local authority: (1) must give notice of the order by advertisement in a local newspaper circulating in the district and in such other manner as it thinks sufficient for informing persons interested; and (2) must also send a copy to each registered medical practitioner who, after due inquiry, is ascertained to be practising in its district: s 16(3) (prospectively repealed). The order comes into operation on such date, not being earlier than one week after the date of the publication of the advertisement of the order in a local newspaper, as the local authority may fix: s 16(3) (prospectively repealed).

10 If, in a case which appears to a local authority to be one of emergency, the authority resolves to make a temporary order and declares in its resolution the nature of the emergency, the order may be advertised at once in accordance with the provisions of the Public Health (Control of Disease) Act 1984 s 16(3) (see note 9) and the temporary order comes into operation at the end of one week from the date of the publication of the advertisement: s 16(4) (prospectively repealed). See note 1. A copy of the resolution to make a temporary order

must be transmitted to the Secretary of State as soon as it is passed: s 16(5) (prospectively repealed). The temporary order, unless previously approved by the Secretary of State, ceases to be in force at the end of one month after it is made, and may be revoked by the Secretary of State at any earlier date: s 16(5) (prospectively repealed). Any temporary order must specify the period during which it is to continue in operation: s 16(6) (prospectively repealed).

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 PREVENTION AND CONTROL OF DISEASE/(3) NOTIFIABLE DISEASES/(i) Notification/894.
 Notification by medical practitioner.

894. Notification by medical practitioner.

Until a day to be appointed¹, if a registered medical practitioner² becomes aware, or suspects, that a patient whom he is attending within the district of a local authority³ is suffering from a notifiable disease⁴ or from food poisoning, he must forthwith send to the proper officer⁵ of the local authority for that district a certificate⁶ stating: (1) the name, age and sex of the patient and the address of the premises⁷ where the patient is⁸; (2) the disease or, as the case may be, particulars of the poisoning from which the patient is, or is suspected to be, suffering and the date, or approximate date, of its onset⁹. The officer who receives the certificate must, on the day of its receipt (if possible) and in any case within 48 hours after its receipt, send a copy to the primary care trust or local health board within whose area the premises whose address is specified in the certificate are situated¹⁰.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

3 As to the meaning of 'local authority' see PARA 99.

4 As to the meaning of 'notifiable disease' see PARA 893.

5 As to the meaning of 'proper officer' see PARA 889 note 3. As to the general duty of a proper officer to make weekly and quarterly returns of the number of cases of infectious diseases and food poisoning in his district see the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 8 (modified by virtue of SI 1996/971; and amended by SI 2002/2469).

6 Public Health (Control of Disease) Act 1984 s 11(1) (prospectively repealed). See note 1. The registered medical practitioner must comply with this provision unless he believes, and has reasonable grounds for believing, that some other registered medical practitioner has done so with respect to the patient: see s 11(1) (prospectively repealed). A person who fails to comply with an obligation imposed on him by s 11(1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 11(4) (prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

A local authority must, upon application, supply forms of certificate for use under this provision free of charge to any registered medical practitioner practising in its district: s 11(2) (prospectively repealed). For the prescribed form of certificate see the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 7, Sch 2.

Subject to any exceptions which he may specify, the Secretary of State may direct that a primary care trust or local health board is to pay to a registered medical practitioner for each certificate duly sent by him under the Public Health (Control of Disease) Act 1984 s 11 a fee of such amount as the direction may specify: s 12(1) (amended by the Health Authorities Act 1995 Sch 1 para 108; the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 2 paras 50(1), (3); and SI 2007/961) (prospectively repealed). As to primary care trusts and local health boards see **HEALTH SERVICES** vol 54 (2008) PARA 75 et seq. The Secretary of State may direct that different fees are to be paid under the Public Health (Control of Disease) Act 1984 s 11 in relation to different circumstances: s 12(2) (prospectively repealed). A direction may make provision in relation to fees payable after a date specified in the direction: s 12(3) (prospectively repealed). The date may be before or after the date of the direction but may not be before if it would be to the detriment of registered medical practitioners: s 12(4) (prospectively repealed). Before giving a direction as to a fee, the Secretary of State must consult any body accepted by him as a proper body for negotiating fees for registered medical practitioners: s 12(5) (prospectively repealed). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

The fact that a registered medical practitioner who gives a certificate under s 11 holds the office to whose holder the certificate is required to be sent does not disentitle him to payment of the fee (if any) payable for the certificate: s 12(6) (prospectively repealed).

7 As to the meaning of 'premises' see PARA 1 note 34.

8 Public Health (Control of Disease) Act 1984 s 11(1)(a) (prospectively repealed). See note 1.

9 Public Health (Control of Disease) Act 1984 s 11(1)(b) (prospectively repealed). See note 1. If the premises are a hospital, the certificate must also state the day on which the patient was admitted, the address of the premises from which he came there, and whether or not, in the opinion of the person giving the certificate, the disease or poisoning from which the patient is, or is suspected to be, suffering was contracted in the hospital: s 11(1)(c) (prospectively repealed). For the purposes of s 11, 'hospital' means any institution for the reception and treatment of persons suffering from illness, any maternity home and any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation; and 'illness' includes mental disorder within the meaning of the Mental Health Act 1983 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 402) and any injury or disability requiring medical, surgical or dental treatment or nursing: Public Health (Control of Disease) Act 1984 s 11(5) (prospectively repealed). As to the meaning of 'hospital' generally see PARA 900 note 2.

10 Public Health (Control of Disease) Act 1984 s 11(3)(a) (s 11(3) amended by the Health Authorities Act 1995 Sch 1 para 108(1), (3); the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 2 paras 50(1), (2); and SI 2007/961) (prospectively repealed). See note 1.

If the certificate is given with respect to a patient in a hospital who came there from premises outside the district of the local authority within whose district the hospital is situated and the certificate states that the patient did not contract the disease or poisoning in the hospital, a copy of the certificate must also be sent to: (1) the proper officer of the local authority for the district within which the premises from which the patient came are situated; (2) the primary care trust or local health board for the area in which those premises are situated, if that primary care trust or local health board is not responsible for the administration of the hospital; and (3) the proper officer of the relevant port health authority, if those premises were a ship or hovercraft situated within the port health district for which that authority is constituted: Public Health (Control of Disease) Act 1984 s 11(3)(b) (as so amended) (prospectively repealed). As to port health authorities and port health districts see PARA 102.

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895. Diseases which must be specially reported.

The proper officer¹ for a district or port health district² must immediately inform the Chief Medical Officer for England or the Chief Medical Officer for Wales³, depending on whether the district is in England or Wales, and the appropriate medical officer of the appropriate health authority⁴, of:

- 2122 (1) any case or suspected case of a disease subject to the International Health Regulations⁵; and
- 2123 (2) any serious outbreak of any disease (including food poisoning)⁶,

which to his knowledge has occurred in his district or port health district⁷.

A proper officer who receives a certificate⁸ in respect of a case of:

- 2124 (a) a disease subject to the International Health Regulations⁹;
- 2125 (b) leprosy¹⁰;
- 2126 (c) malaria or rabies contracted in Great Britain¹¹; or
- 2127 (d) a viral haemorrhagic fever¹²,

must immediately send a copy to the Chief Medical Officer for England if the address of the patient in the certificate is in England or to the Chief Medical Officer for Wales if such address is in Wales¹³.

1 As to the meaning of 'proper officer' see PARA 889 note 3.

2 Any reference to the district or port health district of a proper officer means the district of the local authority or port health authority, as the case may be, of which he is the proper officer: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 2(1). The 1988 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885. As to the meaning of 'local authority' see PARA 99; and as to the meaning of 'district' see PARA 885 note 6. As to the meanings of 'port health district' and 'port health authority' see PARA 886 note 4. As to port health authorities generally see PARA 102.

3 As to the Chief Medical Officer see the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 2(1).

4 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 6(2) (amended by SI 2002/2469). 'Appropriate medical officer' means: (1) in a case where the health authority or primary care trust has appointed a director of public health, the director of public health; and (2) in any other case, the registered medical practitioner designated by the health authority or primary care trust for these purposes: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 2(1) (definition amended by SI 2002/2469). 'Health authority' means a health authority established under the National Health Service Act 1977 s 8(1) (see **HEALTH SERVICES** vol 54 (2008) PARA 75 et seq): Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 2(1) (definition added by SI 2002/2469). 'Appropriate health authority' means: (a) in Wales, the health authority within which a district of a local authority or a port health district is wholly or partly situated; and (b) in England, the primary care trust: (i) any part of whose area falls within that of the local authority or port health district of the proper officer; and (ii) which appears to the proper officer to be the relevant primary care trust: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 2(1) (definition substituted by SI 2002/2469). 'Primary care trust' means a primary care trust established under the National Health Service Act 1977 s 16A (see **HEALTH SERVICES** vol 54 (2008) PARA 111 et seq): Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 2(1) (definition added by SI 2002/2469). As to the meaning of 'registered medical practitioner'

see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4. In relation to Wales, references to a health authority are to be treated as references to a local health board: see the References to Health Authorities Order 2007, SI 2007/961.

5 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 6(2)(a). For these purposes, 'disease subject to the International Health Regulations' means cholera, including cholera due to the eltor vibrio, plague, smallpox, including variola minor (alastrim), and yellow fever: reg 6(1). 'International Health Regulations' means the International Health Regulations (1969) as adopted by the World Health Assembly on 25 July 1969, and as amended by the 26th World Health Assembly in 1973 and by the 34th World Health Assembly in 1981: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 2(1).

6 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 6(2)(b).

7 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 6(2).

8 'Certificate' means a certificate required by the Public Health (Control of Disease) Act 1984 s 11 to be sent by a registered medical practitioner to a proper officer (see PARA 889 note 3): Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 2(1).

9 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 6(3)(a).

10 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 6(3)(b).

11 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 6(3)(c). As to the meaning of 'Great Britain' see PARA 1 note 2.

12 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 6(3)(d). As to the meaning of 'viral haemorrhagic fever' see PARA 893 note 5.

13 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 6(3).

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(ii) Prevention of Spread of Infection

896. Justice's power to order medical examination.

Until a day to be appointed¹, a justice of the peace may order² that a person in the district³ of a local authority⁴ is to be medically examined⁵ by a registered medical practitioner⁶ nominated by the local authority, if the justice is satisfied, on a written certificate issued by such a practitioner⁷: (1) that there is reason to believe that that person is or has been suffering from a notifiable disease⁸ or, though not suffering from such a disease, is carrying an organism that is capable of causing it⁹; and (2) that in his own interest, or in the interest of his family, or in the public interest, it is expedient that he should be medically examined¹⁰; and (3) that he is not under the treatment of a registered medical practitioner or that the registered medical practitioner who is treating him consents to the making of such an order¹¹.

A justice of the peace may also order¹² that a group of persons is to be medically examined by a registered medical practitioner nominated by the local authority for the district, if the justice is satisfied, on a written certificate issued by the proper officer of the local authority¹³: (a) that there is reason to believe that one of the group, though not suffering from a notifiable disease¹⁴, is carrying an organism that is capable of causing it¹⁵; and (b) that in the interest of those persons or their families, or in the public interest, it is expedient that those persons should be medically examined¹⁶.

Any such order¹⁷ may be combined with a warrant¹⁸ authorising a registered medical practitioner nominated by the local authority to enter any premises¹⁹.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 The justice of the peace may, if he deems it necessary, act in the absence of the person concerned: see the Public Health (Control of Disease) Act 1984 s 35(1) (prospectively repealed). See note 1.

3 As to the meaning of 'district' see PARA 885 note 6.

4 As to the meaning of 'local authority' see PARA 99.

5 For these purposes, references to a person's being medically examined are to be construed as including references to his being submitted to bacteriological and radiological tests and similar investigations: see the Public Health (Control of Disease) Act 1984 ss 35(3), 36(2) (prospectively repealed). See note 1.

6 As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

7 Public Health (Control of Disease) Act 1984 s 35(1) (prospectively repealed). See note 1.

8 As to the meaning of 'notifiable disease' see PARA 893.

9 Public Health (Control of Disease) Act 1984 s 35(1)(a) (prospectively repealed). See note 1. Where s 35, as modified by the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 4, is applied to a disease, it does not apply to a person merely carrying an organism capable of causing the disease specified: see the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 4; and PARA 893.

10 Public Health (Control of Disease) Act 1984 s 35(1)(b) (prospectively repealed). See note 1.

- 11 Public Health (Control of Disease) Act 1984 s 35(1)(c) (prospectively repealed). See note 1.
- 12 The justice of the peace may, if he deems it necessary, act in the absence of the person concerned: see the Public Health (Control of Disease) Act 1984 s 36(1) (prospectively repealed). See note 1.
- 13 Public Health (Control of Disease) Act 1984 s 36(1) (prospectively repealed). See note 1. As to the meaning of 'proper officer' see PARA 889 note 3.
- 14 See PARA 893.
- 15 Public Health (Control of Disease) Act 1984 s 36(1)(a) (prospectively repealed). See note 1.
- 16 Public Health (Control of Disease) Act 1984 s 36(1)(b) (prospectively repealed). See note 1.
- 17 Ie under the Public Health (Control of Disease) Act 1984 s 35 or s 36.
- 18 Ie under the Public Health (Control of Disease) Act 1984 s 61(3): see PARA 140.
- 19 Public Health (Control of Disease) Act 1984 ss 35(2), 36(2) (prospectively repealed). See note 1. For the purposes of s 61(3) (see PARA 140), the practitioner, if not an officer of the local authority, is to be treated as one: ss 35(2), 36(2) (as so prospectively repealed). As to the meaning of 'premises' see PARA 1 note 34.

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897. Occupations involving risk of infection.

Until a day to be appointed¹, a person who, knowing that he is suffering from a notifiable disease², engages in or carries on any trade, business or occupation which he cannot engage in or carry on without risk of spreading the disease is liable to a penalty³.

If a case of a notifiable disease occurs on any premises⁴, the local authority for the district⁵ may make an order⁶ forbidding certain work⁷ to be given out to any person living or working on those premises or on such part of them as may be specified in the order⁸. Any such order may be served on the occupier of any factory⁹ or other place from which work is given out, or on any contractor employed by any such occupier¹⁰. If any occupier or contractor on whom such an order has been served contravenes the provisions of the order, he is liable to a penalty¹¹.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'notifiable disease' see PARA 893.

3 Public Health (Control of Disease) Act 1984 s 19 (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 19 (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

There are particular provisions in relation to occupations, trades or businesses connected with food: see PARA 911. As to food hygiene generally see **FOOD**.

4 As to the meaning of 'premises' see PARA 1 note 34.

5 As to the meaning of 'local authority' see PARA 99; and as to the meaning of 'district' see PARA 885 note 6.

6 The order may be made whether or not the person suffering from the disease has been removed from the premises: see the Public Health (Control of Disease) Act 1984 s 28(1) (prospectively repealed). See note 1.

7 I.e. the making, cleaning, washing, altering, ornamenting, finishing or repairing of wearing apparel and any incidental work, and such other classes of work as may be specified by order of the Secretary of State: Public Health (Control of Disease) Act 1984 s 28(4). The power of the Secretary of State to make orders under this provision is exercisable by statutory instrument: s 28(5) (prospectively repealed). See note 1. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

8 Public Health (Control of Disease) Act 1984 s 28(1) (prospectively repealed). See note 1. The order may be expressed: (1) to operate for a specific time or until the premises or any part of them specified in the order have been disinfected to the satisfaction of the local authority; or (2) to be inoperative so long as any other reasonable precautions specified in the order are taken: s 28(2) (prospectively repealed).

9 'Factory' has the meaning given by the Factories Act 1961 s 175 (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 318): Public Health (Control of Disease) Act 1984 s 74. This definition is prospectively repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 29, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also note 1.

10 Public Health (Control of Disease) Act 1984 s 28(1) (prospectively repealed). See note 1.

11 Public Health (Control of Disease) Act 1984 s 28(3) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 28(3) (as so prospectively repealed).

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898. Discontinuance of work.

Until a day to be appointed¹, the proper officer² of the local authority for any district³ may by notice in writing request any person to discontinue his work, with a view to preventing the spread of a notifiable disease⁴ or certain other diseases⁵. The local authority must compensate a person who has suffered any loss in complying with such a request⁶.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'proper officer' see PARA 889 note 3.

3 As to the meaning of 'local authority' see PARA 99; and as to the meaning of 'district' see PARA 885 note 6.

4 As to the meaning of 'notifiable disease' see PARA 893.

5 Public Health (Control of Disease) Act 1984 s 20(1) (amended by the Food Safety Act 1990 Sch 3 para 28) (prospectively repealed). See note 1. The diseases specified are: enteric fever (including typhoid and paratyphoid fevers), dysentery, diphtheria, scarlet fever, acute inflammation of the throat, gastro-enteritis, and undulant fever: Public Health (Control of Disease) Act 1984 s 20(1A) (added by the Food Safety Act 1990 Sch 3 para 28) (prospectively repealed).

6 Public Health (Control of Disease) Act 1984 s 20(2) (prospectively repealed). See note 1. The provisions of s 57(2)-(4) (see PARA 887) apply to any dispute arising under this provision: see s 20(2).

In *Sidney v West Devon District Council* (27 June 1980, unreported), Griffiths J, sitting at Exeter, held that compensation was payable not only for loss of wages whilst the employment contract subsisted but also for subsequent loss caused by the termination of that contract because of contact with a notifiable disease.

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899. Exposure of infected persons or things.

Until a day to be appointed¹, a person is liable to a penalty² if: (1) knowing that he is suffering from a notifiable disease³, he exposes other persons to the risk of infection by his presence or conduct in any street⁴, public place, place of entertainment or assembly, club, hotel, inn or shop⁵; (2) having the care of a person whom he knows to be suffering from a notifiable disease, he causes or permits that person to expose other persons to the risk of infection by his presence or conduct in any such place as is mentioned in head (1) above⁶; or (3) he gives, lends, sells, transmits or exposes, without previous disinfection, any clothing, bedding or rags which he knows to have been exposed to infection from any such disease, or any other article which he knows to have been so exposed and which is liable to carry such infection⁷. However, a person does not incur liability under this provision by transmitting with proper precautions any article for the purpose of having it disinfected⁸.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see the Public Health (Control of Disease) Act 1984 s 17(1) (prospectively repealed). See note 1. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

The exposure in public of a person infected eg with smallpox may be an indictable nuisance: see *R v Vantandillo* (1815) 4 M & S 73; and **NUISANCE** vol 78 (2010) PARA 106.

3 As to the meaning of 'notifiable disease' see PARA 893.

4 'Street' includes any highway, including a highway over a bridge, and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not: Public Health (Control of Disease) Act 1984 s 74. This definition is prospectively repealed by the Health and Social Care Act 2008 ss 130(2), 166, Sch 11 paras 1, 29, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also note 1.

5 Public Health (Control of Disease) Act 1984 s 17(1)(a) (prospectively repealed). See note 1.

6 Public Health (Control of Disease) Act 1984 s 17(1)(b) (prospectively repealed). See note 1.

7 Public Health (Control of Disease) Act 1984 s 17(1)(c) (prospectively repealed). See note 1.

8 Public Health (Control of Disease) Act 1984 s 17(2) (prospectively repealed). See note 1. As to disinfection see PARAS 888-889.

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900. Disposal of dead bodies.

Until a day to be appointed¹, if a person dies in hospital² while suffering from a notifiable disease³ and the proper officer⁴ of the local authority for the district⁵ or a registered medical practitioner⁶ certifies that in his opinion it is desirable, in order to prevent the spread of infection, that the body should not be removed from the hospital except for the purpose of being taken direct to a mortuary, or being forthwith buried or cremated, it is unlawful for any person to remove the body from the hospital except for such a purpose⁷.

Every person having the charge or control of premises⁸ in which the body of a person who has died while suffering from a notifiable disease is lying must take such steps as may be reasonably practicable to prevent persons coming unnecessarily into contact with, or proximity to, the body⁹; and it is not lawful to hold a wake over the body of a person who has died while suffering from a notifiable disease¹⁰.

If a justice of the peace¹¹ is satisfied, on a certificate of the proper officer of the local authority for the district in which a dead body lies, that the retention of the body in any building would endanger the health of the inmates of that building or of any adjoining or neighbouring building, he may order: (1) that the body be removed by, and at the cost of, the local authority¹²; and (2) that the necessary steps be taken to secure that it is buried within a time limited by the order or, if he considers immediate burial necessary, immediately¹³.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 'Hospital' includes any premises for the reception of the sick: Public Health (Control of Disease) Act 1984 s 74. This definition is prospectively repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 29, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also note 1.

3 As to the meaning of 'notifiable disease' see PARA 893.

4 As to the meaning of 'proper officer' see PARA 889 note 3.

5 As to the meaning of 'local authority' see PARA 99; and as to the meaning of 'district' see PARA 885 note 6.

6 As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

7 See the Public Health (Control of Disease) Act 1984 s 43(1) (prospectively repealed) (see note 1); and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 927. In any such case, when the body is removed for the purpose of burial or cremation from the hospital or any mortuary to which it has been taken, it must forthwith be taken direct to some place of burial or crematorium and there buried or cremated: see s 43(2) (prospectively repealed). A person who contravenes any of the provisions of s 43 is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 43(3) (prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

8 As to the meaning of 'premises' see PARA 1 note 34.

9 See the Public Health (Control of Disease) Act 1984 s 44 (prospectively repealed) (see note 1); and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 926. If such a person fails to take such steps, he is liable on summary conviction to a fine not exceeding level 1 on the standard scale: see s 44 (as so prospectively repealed).

10 See the Public Health (Control of Disease) Act 1984 s 45 (prospectively repealed) (see note 1); and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 926. The occupier of any premises who permits or suffers any such wake to take place there, and every person who takes part in the wake, is liable on summary conviction to a fine not exceeding level 1 on the standard scale: see s 45 (as so prospectively repealed).

11 The justice of the peace may, if he deems it necessary, act in the absence of the person concerned: see the Public Health (Control of Disease) Act 1984 s 48(1).

12 See the Public Health (Control of Disease) Act 1984 s 48(1); and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 925. As from a day to be appointed s 48(1) is revised so that the words 'in any building would endanger the health of the inmates of that building or of any adjoining or neighbouring building' are replaced by the words 'in any place would endanger the health of any person': s 48(1) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 7). At the date at which this volume states the law no such day had been appointed. See also note 1.

Where such an order is made, relatives or friends of the deceased person are deemed to comply with the order if they cause the body to be cremated within the time limited by the order or, as the case may be, immediately: Public Health (Control of Disease) Act 1984 s 48(2). An order under s 48(1) is an authority to any officer named in it to do all acts necessary for giving effect to the order: s 48(3). As to the disposal of dead bodies by local authorities see s 46; and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 920.

13 Public Health (Control of Disease) Act 1984 s 48(1). As to the power to make regulations as to the disposal of dead bodies see s 47; and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 928.

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901. Deposit of rubbish.

Until a day to be appointed¹, a person who places, or causes or permits to be placed, in a dustbin² or ashpit any matter which he knows to have been exposed to infection from a notifiable disease³, and which has not been disinfected⁴, is liable to a penalty⁵. The local authority⁶ must give notice of these provisions to the occupier of any house⁷ in which the authority is aware that there is a person suffering from a notifiable disease⁸.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 'Dustbin' means a movable receptacle for the deposit of ashes or refuse: Public Health (Control of Disease) Act 1984 s 74. This definition is prospectively repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 29, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also note 1. As to waste generally see PARA 620 et seq.

3 As to the meaning of 'notifiable disease' see PARA 893.

4 As to disinfection see PARAS 888-889.

5 Public Health (Control of Disease) Act 1984 s 26(1) (prospectively repealed). See note 1. The penalty is a fine not exceeding level 1 on the standard scale: see s 26(1) (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

6 As to the meaning of 'local authority' see PARA 99.

7 As to the meaning of 'house' see PARA 1 note 34.

8 Public Health (Control of Disease) Act 1984 s 26(2) (prospectively repealed). See note 1. If the local authority is requested to do so by the occupier of any premises in Greater London in which there is a person suffering from a notifiable disease, the local authority must provide for the removal and disinfection or destruction of any rubbish that has been exposed to infection from that disease: s 26(3) (prospectively repealed). As to the meaning of 'premises' see PARA 1 note 34.

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902. Sending infected articles to laundry or cleaners.

Until a day to be appointed¹, a person must not send or take to any laundry or public washhouse, for the purpose of being washed, or to any place for the purpose of being cleaned, any article which he knows to have been exposed to infection from a notifiable disease², unless that article: (1) has been disinfected³ by or to the satisfaction of the proper officer⁴ of the local authority for the district⁵ or a registered medical practitioner⁶; or (2) is sent with proper precautions to a laundry for the purpose of disinfection, with notice that it has been exposed to infection⁷. The occupier of any building in which a person is suffering from a notifiable disease must, if required by the local authority, furnish to the authority the address of any laundry, washhouse or other place to which articles⁸ have been or will be sent during the continuance of the disease for the purpose of being washed or cleaned⁹. A person who contravenes or fails to comply with any of these provisions is liable to a penalty¹⁰.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'notifiable disease' see PARA 893.

3 As to disinfection see PARAS 888-889.

4 As to the meaning of 'proper officer' see PARA 889 note 3.

5 As to the meaning of 'local authority' see PARA 99; and as to the meaning of 'district' see PARA 885 note 6.

6 Public Health (Control of Disease) Act 1984 s 24(1)(a) (prospectively repealed). See note 1. As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

7 Public Health (Control of Disease) Act 1984 s 24(1)(b) (prospectively repealed). See note 1. The local authority may pay the expenses of the disinfection of any such article if carried out by the authority or under its direction: s 24(2) (prospectively repealed).

8 The wording of the Public Health (Control of Disease) Act 1984 s 24(3) specifies 'articles from the house', but cf the use of the word 'building' at the beginning of that provision. As to the meaning of 'house' see PARA 1 note 34.

9 Public Health (Control of Disease) Act 1984 s 24(3) (prospectively repealed). See note 1.

10 Public Health (Control of Disease) Act 1984 s 24(4) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 24(4) (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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903. Library books.

Until a day to be appointed¹, a person who knows that he is suffering from a notifiable disease² must not take any book, or cause any book to be taken for his use, or use any book taken, from any public or circulating library³, nor may a person permit any book which has been taken from a public or circulating library, and is under his control, to be used by any person whom he knows to be suffering from a notifiable disease⁴. A person must not return to any public or circulating library a book which he knows to have been exposed to infection from a notifiable disease, or permit any such book which is under his control to be so returned, but must give notice to the local authority⁵, or, in the case of a library provided by a county council, to that council, that the book has been so exposed to infection⁶. A person contravening any of these provisions⁷ is liable to a penalty⁸. On receiving a notice that a book has been exposed to infection, the local authority or, as the case may be, the county council must cause the book to be disinfected and returned to the library, or must cause it to be destroyed⁹.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'notifiable disease' see PARA 893.

3 See the Public Health (Control of Disease) Act 1984 s 25(1) (prospectively repealed) (see note 1); and **LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS** vol 28 (Reissue) PARA 418.

4 See the Public Health (Control of Disease) Act 1984 s 25(2) (prospectively repealed) (see note 1); and **LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS** vol 28 (Reissue) PARA 418.

5 As to the meaning of 'local authority' see PARA 99.

6 See the Public Health (Control of Disease) Act 1984 s 25(3) (prospectively repealed) (see note 1); and **LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS** vol 28 (Reissue) PARA 418.

7 I.e. the Public Health (Control of Disease) Act 1984 s 25(1), (2), (3) (prospectively repealed) (see note 1).

8 See the Public Health (Control of Disease) Act 1984 s 25(5) (prospectively repealed) (see note 1); and **LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS** vol 28 (Reissue) PARA 418. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 25(5) (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

9 See the Public Health (Control of Disease) Act 1984 s 25(4) (prospectively repealed) (see note 1); and **LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS** vol 28 (Reissue) PARA 418. As to disinfection see PARAS 888-889.

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904. Public conveyances.

Until a day to be appointed¹, no person who knows that he is suffering from a notifiable disease² may enter any public conveyance used for the conveyance of persons at separate fares³, or enter any other public conveyance without previously notifying the owner or driver that he is so suffering⁴. Similarly no person having the care of a person whom he knows to be suffering from a notifiable disease may permit that person to be carried in any public conveyance used for the conveyance of persons at separate fares⁵, or in any other public conveyance without previously informing the owner or driver that that person is so suffering⁶. Any person who contravenes any of these provisions is liable to a penalty⁷ and, in addition to any fine imposed, is to be ordered by the court to pay any person concerned with the conveyance as owner, driver or conductor a sum sufficient to cover any loss and expense incurred by him in connection with the disinfection⁸ of the conveyance⁹.

The owner, driver or conductor of a public conveyance used for the conveyance of passengers at separate fares must not convey in it a person whom he knows to be suffering from a notifiable disease¹⁰. The owner or driver of any other public conveyance may refuse to convey in it any person suffering from a notifiable disease until he has been paid a sum sufficient to cover any loss and expense which will be incurred by reason of having to comply with the following requirements¹¹. If a person suffering from a notifiable disease is conveyed in a public conveyance, the person in charge of the conveyance must as soon as practicable give notice to the local authority for the district¹² in which the conveyance is usually kept¹³ and, before permitting any other person to enter the conveyance, must cause it to be disinfected¹⁴. Any person concerned with the conveyance as its owner, driver or conductor may recover summarily as a civil debt from the person so conveyed, or from the person causing that person to be so conveyed, a sufficient sum to cover any loss and expense incurred by him¹⁵. A person who contravenes any of these provisions is liable to a penalty¹⁶.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'notifiable disease' see PARA 893.

3 Public Health (Control of Disease) Act 1984 s 33(1)(a) (prospectively repealed). See note 1.

4 Public Health (Control of Disease) Act 1984 s 33(1)(b) (prospectively repealed). See note 1.

5 Public Health (Control of Disease) Act 1984 s 33(2)(a) (prospectively repealed). See note 1.

6 Public Health (Control of Disease) Act 1984 s 33(2)(b) (prospectively repealed). See note 1.

7 Public Health (Control of Disease) Act 1984 s 33(3)(a) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 33(3)(a) (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

8 In accordance with the Public Health (Control of Disease) Act 1984 s 34: see the text and notes 10-16.

9 Public Health (Control of Disease) Act 1984 s 33(3)(b) (prospectively repealed). See note 1.

10 Public Health (Control of Disease) Act 1984 s 34(1) (prospectively repealed). See note 1.

11 Public Health (Control of Disease) Act 1984 s 34(2) (prospectively repealed). See note 1. As to the requirements see s 34(3); and the text and notes 13-15.

12 As to the meaning of 'local authority' see PARA 99; and as to the meaning of 'district' see PARA 885 note 6.

13 Public Health (Control of Disease) Act 1984 s 34(3)(a) (prospectively repealed). See note 1.

14 Public Health (Control of Disease) Act 1984 s 34(3)(b) (prospectively repealed). See note 1. When so requested by the person in charge of a public conveyance in which a person suffering from a notifiable disease has been conveyed, the local authority must provide for disinfection of the conveyance, and may make no charge for the disinfection except in a case where the owner, driver or conductor conveyed the person knowing that he was suffering from a notifiable disease: s 34(5) (prospectively repealed).

15 Public Health (Control of Disease) Act 1984 s 34(3) (prospectively repealed). See note 1.

16 Public Health (Control of Disease) Act 1984 s 34(4) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 34(4) (as so prospectively repealed).

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905. Infectious schoolchildren.

Until a day to be appointed¹, a person having the care of a child who is or has been suffering from a notifiable disease², or has been exposed to infection of a notifiable disease³, must not, after receiving notice from the proper officer⁴ of the local authority for the district⁵ that the child is not to be sent to school⁶, permit the child to attend school until he has obtained from the proper officer a certificate⁷ that in his opinion the child may attend without undue risk of communicating the disease to others⁸. A person who contravenes these provisions is liable to a penalty⁹.

The principal¹⁰ of a school in which any pupil is suffering from a notifiable disease must, if required by the proper officer of the local authority for the district, furnish to him, within a reasonable time fixed by him, a complete list of the names and addresses of the pupils, not being boarders, in or attending the school or any specified department of the school¹¹. If the principal of a school fails to comply with these provisions, he is liable to a penalty¹².

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 Public Health (Control of Disease) Act 1984 s 21(1)(a) (prospectively repealed). See note 1. As to the meaning of 'notifiable disease' see PARA 893.

3 Public Health (Control of Disease) Act 1984 s 21(1)(b) (prospectively repealed). See note 1.

4 As to the meaning of 'proper officer' see PARA 889 note 3.

5 As to the meaning of 'local authority' see PARA 99; and as to the meaning of 'district' see PARA 885 note 6.

6 'School' includes a Sunday school or a Sabbath school: Public Health (Control of Disease) Act 1984 s 74. This definition is prospectively repealed by the Health and Social Care Act 2008 ss 130(2), 166, Sch 11 paras 1, 29, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also note 1.

7 No charge may be made for such a certificate: Public Health (Control of Disease) Act 1984 s 21(2) (prospectively repealed). See note 1.

8 Public Health (Control of Disease) Act 1984 s 21(1) (prospectively repealed). See note 1.

9 Public Health (Control of Disease) Act 1984 s 21(3) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 21(3) (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

10 'Principal' means the person in charge of a school and includes, where the school is divided into departments and no one person is in charge of the whole school, the head of any department: Public Health (Control of Disease) Act 1984 s 22(4) (prospectively repealed). See note 1.

11 Public Health (Control of Disease) Act 1984 s 22(1) (prospectively repealed). See note 1. The local authority must pay to the principal of a school for every such list furnished by him the sum of 2p; and, if the list contains more than 25 names, a further sum of 2p for every 25 names (including the first 25 names) contained in the list: s 22(2) (amended by virtue of a Royal Proclamation dated 31 December 1984, abolishing the halfpenny) (prospectively repealed).

12 Public Health (Control of Disease) Act 1984 s 22(3) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 22(3) (as so prospectively repealed).

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906. Exclusion of children from public places of entertainment or assembly.

Until a day to be appointed¹, with a view to preventing the spread of a notifiable disease², a local authority³ may by notice⁴ prohibit or restrict the admission of persons under the prescribed age⁵ to certain places of entertainment or assembly⁶ for a time specified in the notice⁷. If the person responsible for the management of such a place, having been served with a copy of such a notice, admits any person under the prescribed age to that place in contravention of the notice, or fails to comply with any condition specified in it, he is liable to a penalty⁸, although it is a defence to prove that there were reasonable grounds for believing that the person admitted had attained the prescribed age⁹.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'notifiable disease' see PARA 893.

3 As to the meaning of 'local authority' see PARA 99.

4 The notice must be published by the local authority in such a manner as it thinks best for bringing it to the notice of persons concerned: Public Health (Control of Disease) Act 1984 s 23(2) (prospectively repealed). See note 1. Such a notice may contain exemptions from the prohibitions or restrictions which it imposes, and any such exemption may be made subject to compliance with such conditions as may be specified in the notice: s 23(3). The notice may be expressed to apply to particular premises, or parts of premises, designated in the notice, or to part only of the district of the authority, but, except as otherwise provided in the notice, the notice applies throughout the district of the local authority: s 23(4) (prospectively repealed). As to the meaning of 'district' see PARA 885 note 6. As to the meaning of 'premises' see PARA 1 note 34.

5 'Prescribed age', in relation to a notice, means such age, not exceeding 16, as may be prescribed by the notice: Public Health (Control of Disease) Act 1984 s 23(7) (prospectively repealed). See note 1.

6 These provisions apply: (1) to any theatre, including a cinematograph theatre, and any building used as a public hall, public concert room or lecture room, public dance room or public gymnasium or indoor swimming baths (Public Health (Control of Disease) Act 1984 s 23(1)(a) (prospectively repealed) (see note 1)); (2) to any sports ground, outdoor swimming baths, outdoor swimming pool, or skating or roller skating rink, to which the public are admitted, either on payment of a charge for admission or not (s 23(1)(b) (prospectively repealed)); and (3) to any circus, show, fair, fete, amusement arcade or other public place of entertainment which is not a building (s 23(1)(c) (prospectively repealed)).

7 Public Health (Control of Disease) Act 1984 s 23(2) (prospectively repealed). See note 1.

8 Public Health (Control of Disease) Act 1984 s 23(5) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 23(5) (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

9 Public Health (Control of Disease) Act 1984 s 23(6) (prospectively repealed). See note 1.

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907. Letting houses or rooms exposed to infection.

Until a day to be appointed¹, if a person who is concerned in the letting of a house or part of a house², or in showing a house or part of a house with a view to its being let³, or who has recently ceased to occupy a house or part of a house⁴, is questioned by any person negotiating for the hire of the house or any part of it as to whether there is, or has been within the preceding six weeks, in any part of the house a person suffering from a notifiable disease⁵, and knowingly makes a false answer to that question, he is liable to a penalty⁶. Furthermore, a person who lets any house or part of a house in which a person has to his knowledge been suffering from a notifiable disease, without having the house, and all articles in it liable to retain infection, properly disinfected⁷, is liable to a penalty⁸. Similarly, the keeper of a hotel or inn who allows a room in it, in which a person has to his knowledge been suffering from a notifiable disease, to be occupied by any other person before the room and all articles in it liable to retain infection have been properly disinfected, is liable to a penalty⁹.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'house' see PARA 1 note 34. As to lodgings see PARA 957 et seq.

3 Public Health (Control of Disease) Act 1984 s 29(1)(a) (prospectively repealed). See note 1.

4 Public Health (Control of Disease) Act 1984 s 29(1)(b) (prospectively repealed). See note 1. As to the duty and liability of outgoing occupiers see also PARA 908.

5 As to the meaning of 'notifiable disease' see PARA 893.

6 Public Health (Control of Disease) Act 1984 s 29(1) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 2 on the standard scale or imprisonment for a term not exceeding one month: see s 29(1) (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As from a day to be appointed, s 29(1) is amended so as to refer to 51 weeks instead of one month: s 29(1) (prospectively amended by the Criminal Justice Act 2003 Sch 26 para 32(1), (2)). At the date at which this volume states the law no such day had been appointed.

A house in which a person has recently been suffering from pulmonary tuberculosis and where there is an appreciable measure of actual risk does not comply with the implied warranty as to fitness (*Collins v Hopkins* [1923] 2 KB 617), but there is no implied warranty on the taking of furnished lodgings that the intended tenant is not suffering from an infectious disease (*Humphreys v Miller* [1917] 2 KB 122, CA). Cf *Gwynne v Clarke* (1913) 77 JP Jo 172 (express warranty); *Best v Stapp* (1872) 2 CPD 191n.

7 For the purposes of the Public Health (Control of Disease) Act 1984 ss 29, 30 (see PARA 908), 'properly disinfected' means disinfected to the satisfaction of the proper officer of the local authority for the district or a registered medical practitioner, as testified by a certificate signed by him: s 29(4) (prospectively repealed). See note 1. As to the meaning of 'proper officer' see PARA 889 note 3. As to the meaning of 'local authority' see PARA 99; and as to the meaning of 'district' see PARA 885 note 6. As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

8 Public Health (Control of Disease) Act 1984 s 29(2) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 2 on the standard scale: see s 29(2) (as so prospectively repealed).

9 See the Public Health (Control of Disease) Act 1984 s 29(3) (prospectively repealed); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 211vol 24 (Reissue) PARA 1142. The penalty on summary conviction is a fine not exceeding level 2 on the standard scale: see s 29(3) (prospectively repealed). See note 1.

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908. Liability of outgoing occupiers of infected house.

Until a day to be appointed¹, if a person ceases to occupy a house² or part of a house in which to his knowledge a person has, within six weeks previously, been suffering from a notifiable disease³, and: (1) fails to have the house, or the part of the house, and all articles in it liable to retain infection, properly disinfected⁴; or (2) fails to give to the owner⁵ of the house, or the part of the house, notice of the previous existence of the disease⁶; or (3) makes a false answer on being questioned by the owner as to whether within the previous six weeks there has been in it any person suffering from a notifiable disease⁷, then he is liable to a penalty⁸.

The local authority⁹ must give notice of these provisions to the occupier and also to the owner of any house in which the authority is aware that there is a person suffering from a notifiable disease¹⁰.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'house' see PARA 1 note 34.

3 As to the meaning of 'notifiable disease' see PARA 893.

4 Public Health (Control of Disease) Act 1984 s 30(1)(a) (prospectively repealed). See note 1. As to the meaning of 'properly disinfected' see PARA 907 note 7.

5 As to the meaning of 'owner' see PARA 889 note 5.

6 Public Health (Control of Disease) Act 1984 s 30(1)(b) (prospectively repealed). See note 1.

7 Public Health (Control of Disease) Act 1984 s 30(1)(c) (prospectively repealed). See note 1.

8 Public Health (Control of Disease) Act 1984 s 30(1) (prospectively repealed). See note 1. The penalty on summary conviction, in the case of an offence under head (1) or head (2) in the text, is a fine not exceeding level 2 on the standard scale (s 30(1)(i) (prospectively repealed)); and, in the case of an offence under head (3) in the text, is a fine not exceeding level 2 on the standard scale or imprisonment for a term not exceeding one month (s 30(1)(ii) (prospectively repealed)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As from a day to be appointed, s 30(1)(ii) is amended so as to refer to 51 weeks instead of one month: s 30(1)(ii) (prospectively amended by the Criminal Justice Act 2003 Sch 26 para 32(1), (2)). At the date at which this volume states the law no such day had been appointed.

9 As to the meaning of 'local authority' see PARA 99.

10 Public Health (Control of Disease) Act 1984 s 30(2) (prospectively repealed). See note 1.

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909. Information to be furnished by occupier.

Until a day to be appointed¹, on the application of the proper officer² of the local authority³ for any district, the occupier⁴ of any premises⁵ in the district in which there is or has been any person suffering from a notifiable disease⁶ or food poisoning must furnish such information within his knowledge as that officer may reasonably require for the purpose of enabling measures to be taken to prevent the spread of the disease or, as the case may be, to trace the source of food poisoning⁷. If any person required to furnish information under these provisions fails to furnish it, or knowingly furnishes false information, he is liable to a penalty⁸.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'proper officer' see PARA 889 note 3.

3 As to the meaning of 'local authority' see PARA 99.

4 For the purposes of the Public Health (Control of Disease) Act 1984 s 18, 'occupier', in relation to any premises, includes: (1) a person having the charge, management or control of the premises, or of a building of which the premises form part (s 18(3)(a) (prospectively repealed) (see note 1)); and (2) in the case of premises consisting of a building the whole of which is ordinarily let out in separate tenements, or of a lodging house the whole of which is ordinarily let to lodgers, the person receiving the rent payable by the tenants or by the lodgers, as the case may be, either on his own account or as the agent of another person (s 18(3)(b) (prospectively repealed)).

5 As to the meaning of 'premises' see PARA 1 note 34.

6 As to the meaning of 'notifiable disease' see PARA 893.

7 Public Health (Control of Disease) Act 1984 s 18(1) (prospectively repealed). See note 1.

8 Public Health (Control of Disease) Act 1984 s 18(2) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 18(2) (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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910. Destruction of lice in case of typhus or relapsing fever.

The proper officer¹ of a district² must, if he thinks it necessary, report any case of typhus or relapsing fever in his district to the local authority³, who may, by notice in writing⁴, require: (1) that such measures as may be specified in the notice are to be immediately taken to the satisfaction of the proper officer to obtain the complete destruction of lice on the person and clothing of every occupant of the building of which the patient is an inmate, and to secure the destruction of lice or their products in the building⁵; and (2) the temporary segregation, for a period specified in the notice, of other inmates of the building or of other persons recently in contact with the patient until their persons and clothing have been completely freed from lice⁶.

A local authority may authorise the proper officer generally to issue any such notice on its behalf in relation to any particular case if in his opinion it is immediately and urgently necessary for him to do so for the purpose of preventing the spread of infection⁷.

1 As to the meaning of 'proper officer' see PARA 889 note 3.

2 As to the meaning of 'district' see PARA 885 note 6.

3 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 9(1), Sch 3 para 1. As to the meaning of 'local authority' see PARA 99. The 1988 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

4 The notice may be addressed to the head of the family to which the patient belongs, to any person in charge of or in attendance on the patient, to any other person in the building of which the patient is an inmate, or to the occupier of the building, and also to any person with whom the patient has recently been in contact: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 3 para 2.

5 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 3 para 1(a).

6 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 3 para 1(b).

7 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 3 para 3(1). The proper officer must at the earliest opportunity report to the local authority any case dealt with under such an authorisation, and the action taken by him: Sch 3 para 3(2).

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911. Diseases spread through food and drink.

A proper officer¹ must report the matter to the local authority² if, after considering the information available to him, he forms the opinion:

- 2128 (1) that a person in the district³: (a) is suffering from food poisoning which may be caused by an infection⁴; or (b) is suffering from, or is shown to be a carrier of, any specified infection⁵; and
- 2129 (2) that it is desirable for the protection of the public health that measures should be taken to prevent the spread of infection⁶.

On receipt of such a report, the local authority may by notice in writing: (i) require the person concerned to discontinue or to refrain from engaging in any occupation connected with food⁷ until it notifies him that the risk of causing infection is removed⁸; (ii) require that such measures be taken for the protection of the public health as are specified in the notice, being measures which in the opinion of the proper officer are desirable to prevent the spread of infection by the person concerned⁹; and (iii) require the assistance of any other person reasonably able to assist in securing compliance with any requirement under these provisions¹⁰. If the person concerned is already engaged in any occupation connected with food, the local authority must send a copy of any such notice served on him to his employer, if any, and to any other person reasonably able to assist in securing compliance with any requirement under these provisions¹¹.

If a proper officer has reason to believe that a person engaged in any trade or business connected with food may be a carrier of any specified infection¹² he must report to the local authority accordingly¹³. The local authority may give notice in writing to the responsible manager of the trade or business concerned that for the purpose of preventing the spread of infection the authority considers it necessary for the proper officer or a registered medical practitioner acting on his behalf to make a medical examination of that person¹⁴. The responsible manager must give to the proper officer all reasonable assistance in the matter¹⁵.

A local authority may authorise the proper officer generally to issue any notice on its behalf under these provisions in relation to any particular case if in his opinion it is immediately and urgently necessary for him to do so for the purpose of preventing the spread of infection¹⁶.

1 As to the meaning of 'proper officer' see PARA 889 note 3.

2 As to the meaning of 'local authority' see PARA 99.

3 As to the meaning of 'district' see PARA 885 note 6.

4 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 9(2), Sch 4 para 1(1)(a)(i). The 1988 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

5 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 1(1)(a)(ii). The specified infections are typhoid, paratyphoid and other salmonella infections, amoebic and bacillary dysentery, and staphylococcal infections likely to cause food poisoning: see reg 9(2), Sch 4 para 5.

6 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 1(1)(b).

- 7 'Connected with food', in relation to an occupation, trade or business, means connected with the preparation or handling of food or drink for human consumption: Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 4(a). As to food generally see **FOOD**.
- 8 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 1(2)(a).
- 9 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 1(2)(b).
- 10 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 1(2)(c). As to notifiable diseases generally see PARA 893 et seq. As to the notification of diseases among persons handling food see **FOOD**. As to infestation of food see PARA 877 et seq.
- 11 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 1(2).
- 12 See note 5.
- 13 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 2(1).
- 14 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 2(2). The reference to making a medical examination is to be construed as including a reference to making bacteriological tests and similar investigations: Sch 4 para 4(b). As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.
- 15 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 2(2).
- 16 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, Sch 4 para 3(1). The proper officer must at the earliest opportunity report to the local authority any case dealt with under such an authorisation, and the action taken by him: Sch 4 para 3(2).

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912. Persons suffering from tuberculosis of the respiratory tract.

No person who is aware that he is suffering from tuberculosis¹ of the respiratory tract may enter upon any employment or occupation in connection with a dairy² which would involve the milking of cows, the treatment of milk, or the handling of vessels used for containing milk³.

If a local authority⁴, on the report in writing of its proper officer⁵, is satisfied that a person residing in its district who is engaged in any such employment or occupation is suffering from tuberculosis of the respiratory tract and is in an infectious state, the authority may by notice⁶ require that person to discontinue his employment or occupation on or before the date specified in the notice, such date being not less than seven days after service of the notice, and he must comply with the notice⁷. If any person deems himself aggrieved⁸ by such a requirement, he may, within 14 days after the service of the notice, appeal to a magistrates' court⁹. The court may make such order as seems equitable¹⁰, and the order is binding and conclusive¹¹.

The local authority must make full compensation to any person who has sustained damage by reason of the exercise of any of these powers in relation to a matter as to which he has not himself been in default¹².

1 Tuberculosis is a notifiable disease: see PARA 893.

2 'Dairy' includes any farm, cowshed, milk store, milk shop or other place from which milk is supplied on, or for, sale; but does not include a shop or other place in which milk is sold for consumption on the premises only: Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, reg 2. 'Milk' means milk (including cream, skimmed milk and separated milk) intended for sale for human consumption: reg 2. The authority for the 1925 Regulations is the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

3 Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, reg 4. As to neglect or refusal to obey or carry out the regulations see PARA 885. The local authority (see note 4) must enforce and execute the regulations, for which purpose it must make such inquiries and take such other steps as may seem to it necessary for securing the due observance of the regulations in its district: reg 3.

4 For these purposes, 'local authority' means, as the case may be, the Common Council of the City of London, the council of a London borough, or a district council: Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, reg 2 (amended by virtue of the Local Government Act 1972 ss 1(10), (11), 179(3); and by SI 1965/528).

5 As to the meaning of 'proper officer' see PARA 889 note 3.

6 The notice must be in writing, signed by the proper officer: Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, reg 5 (amended by virtue of the Local Government Act 1972 Sch 29 para 4). For a form of notice see the Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, reg 5, Schedule (reg 5 as so amended).

7 Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, reg 5 (as amended: see note 6).

8 As to the person aggrieved see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 66.

9 Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, reg 6(1). Written notice of intention to appeal, stating the grounds, must be given to the proper officer of the local authority: see reg 6(1).

10 Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, reg 6(2). Costs may be awarded, and are recoverable summarily as a civil debt: see reg 6(2). As to the enforcement of civil debts see **MAGISTRATES** vol 29(2) (Reissue) PARA 828. With his consent the court may have the appellant examined by a registered medical practitioner nominated by the court: see reg 6(3). As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

11 Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, reg 6(2).

12 See the Public Health Act 1936 s 278(1), (2) (applied by the Public Health (Prevention of Tuberculosis) Regulations 1925, SR & O 1925/757, reg 7); and PARA 121. See also PARA 898.

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913. Diseases from infected animals and animal products.

Many diseases are transferable from animals to man¹. Specific provisions relating to the prevention of such diseases are largely dealt with elsewhere in this work².

1 Eg rabies: see **ANIMALS** vol 2 (2008) PARA 1054 et seq.

2 See eg **ANIMALS** vol 2 (2008) PARA 1040 et seq; **FOOD; MEDICINAL PRODUCTS AND DRUGS**.

As to the destruction of infected rats see PARA 914; and as to rats and mice generally see PARA 873 et seq. As to pests generally, including the infestation of food, see PARA 877 et seq. As to the destruction of lice in cases of typhus or relapsing fever see PARA 910.

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914. Destruction of rats.

Where a local authority¹ or port health authority² has reason to believe that rats in its district³ or port health district⁴ are threatened by or infected with plague, or are dying in unusual numbers, it must report the matter, if the district or port health district is in England, to the Chief Medical Officer for England or, if such district is in Wales, to the Chief Medical Officer for Wales⁵; and it must take measures for destroying all rats in the district or port health district and for preventing rats from gaining entry to buildings⁶.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'port health authority' see PARA 886 note 4. As to port health authorities generally see PARA 102.

3 As to the meaning of 'district' see PARA 885 note 6.

4 As to the meaning of 'port health district' see PARA 886 note 4. As to port health districts generally see PARA 102.

5 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 11. As to the Chief Medical Officer see reg 2(1). The authority for the 1925 Regulations is the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

6 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 11. As to the general duties of local authorities in relation to rats see PARAS 873-876. As to pests generally see PARA 861 et seq.

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915. Immunisation and vaccination.

Where a case of any notifiable disease¹ or of any specified disease² occurs in a district³ or port health district⁴, the proper officer⁵ of that district or port health district and of any adjacent district or port health district may, if he considers it in the public interest, arrange for the vaccination or immunisation, without charge, of any person in his district or port health district who has come or may have come in contact with the infection and is willing to be vaccinated or immunised⁶.

1 As to the meaning of 'notifiable disease' see PARA 893.

2 Ie any disease mentioned in the Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 3, Sch 1 (see PARA 893) other than tuberculosis: see reg 10. The authority for the 1925 Regulations is the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

3 As to the meaning of 'district' see PARA 885 note 6.

4 As to the meaning of 'port health district' see PARA 886 note 4. As to port health districts generally see PARA 102.

5 As to the meaning of 'proper officer' see PARA 889 note 3.

6 Public Health (Infectious Diseases) Regulations 1988, SI 1988/1546, reg 10. As to vaccine damage payments see the Vaccine Damage Payments Act 1979; and **HEALTH SERVICES** vol 54 (2008) PARA 829 et seq.

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(iii) Removal to and Detention in Hospital

916. Removal of infectious person to hospital.

Until a day to be appointed¹, where, on the application of the local authority², a justice of the peace³ is satisfied: (1) that a person is suffering from a notifiable disease⁴; and (2) that his circumstances are such that proper precautions to prevent the spread of infection cannot be taken or are not being taken⁵; and (3) that serious risk of infection is thereby caused to other persons⁶; and (4) that accommodation for him is available in a suitable hospital⁷, the justice may, with the relevant consent⁸, order him to be removed to that hospital⁹.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'local authority' see PARA 99.

3 The justice of the peace may, if he deems it necessary, act in the absence of the person concerned: see the Public Health (Control of Disease) Act 1984 s 37(1).

4 As to the meaning of 'notifiable disease' see PARA 893.

5 Public Health (Control of Disease) Act 1984 s 37(1)(a) (prospectively repealed). See note 1.

6 Public Health (Control of Disease) Act 1984 s 37(1)(b) (prospectively repealed). See note 1.

7 Public Health (Control of Disease) Act 1984 s 37(1)(c) (amended by the National Health Service and Community Care Act 1990 Sch 9 para 26, Sch 10; the Health Authorities Act 1995 Sch 1 para 108; the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 paras 60, 62; SI 2000/90; and SI 2007/961) (prospectively repealed). See note 1. The reference is to accommodation available in a suitable hospital vested in the Secretary of State or, pursuant to arrangements made by a local health board or primary care trust (whether under an NHS contract or otherwise), in a suitable hospital vested in an NHS trust, NHS foundation trust, primary care trust, local health board or other person: see the Public Health (Control of Disease) Act 1984 s 37(1)(c) (as so amended) (prospectively repealed). As to the meaning of 'hospital' see PARA 900 note 2. 'NHS trust' and 'NHS contract' have the same meanings as in the National Health Service Act 2006 (see **HEALTH SERVICES** vol 54 (2008) PARAS 155 et seq, 228); Public Health (Control of Disease) Act 1984 s 74 (definition amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 79). This definition (of 'NHS trust' and 'NHS contract') is prospectively repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 29, Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also note 1. As to local health boards and NHS foundation trusts see **HEALTH SERVICES** vol 54 (2008) PARAS 75 et seq, 174 et seq. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

8 The consent is that mentioned in the Public Health (Control of Disease) Act 1984 s 37(1A) (added by SI 2002/2469; and amended by SI 2007/961) (prospectively repealed) (see note 1), namely the consent of a primary care trust or local health board any part of whose area falls within that of the local authority, and which appears to the local authority to be an appropriate primary care trust or local health board from whom to obtain consent.

9 Public Health (Control of Disease) Act 1984 s 37(1) (amended by the National Health Service and Community Care Act 1990 Sch 9 para 26, Sch 10; the Health Authorities Act 1995 Sch 1 para 108; and SI 2002/2469) (prospectively repealed). See note 1. The order may be addressed to such officer of the local authority as the justice may think expedient; and that officer and any officer of the hospital may do all acts

necessary for giving effect to the order: Public Health (Control of Disease) Act 1984 s 37(2) (prospectively repealed). As to the meaning of 'officer' see PARA 137 note 3.

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917. Detention of infectious person in hospital.

Until a day to be appointed¹, where, on the application of any local authority², a justice of the peace³ in and for the place in which a hospital⁴ for infectious diseases is situated is satisfied that an inmate of the hospital who is suffering from a notifiable disease⁵ would not, on leaving the hospital, be provided with lodging or accommodation in which proper precautions could be taken to prevent the spread of the disease by him, the justice may order him to be detained in the hospital⁶. The order may direct detention for a period specified in the order, but any justice of the peace acting in and for the same place may extend a period so specified as often as it appears to him to be necessary to do so⁷. Any person who leaves a hospital contrary to an order made under these provisions for his detention there, is liable to a penalty⁸, and the court may order him to be taken back to the hospital⁹.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the meaning of 'local authority' see PARA 99.

3 The justice of the peace may, if he deems it necessary, act in the absence of the person concerned: see the Public Health (Control of Disease) Act 1984 s 38(1) (prospectively repealed). See note 1.

4 As to the meaning of 'hospital' see PARA 900 note 2.

5 As to the meaning of 'notifiable disease' see PARA 893.

6 Public Health (Control of Disease) Act 1984 s 38(1) (prospectively repealed). See note 1. The order for detention may be addressed to such officer of the hospital as the justice may think expedient; and that officer and any officer of the hospital may do all acts necessary for giving effect to the order: see s 38(4) (prospectively repealed). As to the meaning of 'officer' see PARA 137 note 3.

7 Public Health (Control of Disease) Act 1984 s 38(2) (prospectively repealed). See note 1.

8 Public Health (Control of Disease) Act 1984 s 38(3) (prospectively repealed). See note 1. The penalty on summary conviction is a fine not exceeding level 1 on the standard scale: see s 38(3) (as so prospectively repealed). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

9 Public Health (Control of Disease) Act 1984 s 38(3) (prospectively repealed). See note 1. The order for the patient's return to hospital may be addressed to such officer of the local authority on whose application the order for detention was made as the justice may think expedient; and that officer and any officer of the hospital may do all acts necessary for giving effect to the order for the patient's return: see s 38(4) (prospectively repealed).

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(4) PUBLIC HEALTH PROTECTION

(i) In general

918. Introduction.

There are new provisions relating to public health protection in Part IIA of the Public Health (Control of Disease) Act 1984¹ which from certain days including those to be appointed² replace the provisions of Part II and Part V³. These new provisions are considered below⁴.

1 Ie the Public Health (Control of Disease) Act 1984 Pt IIA (ss 45A-45T). See also PARA 884 note 2.

2 Generally the Public Health (Control of Disease) Act 1984 Pt IIA (ss 435A-45T) is in force from 21 July 2008 in so far as it confers power to make subordinate legislation and in some cases (ie ss 45A, 45C, 45D, 45E, 45F, 45P, 45Q, 45R, 45S, 45T) from 1 April 2009 in relation to England: see the Health and Social Care Act 2008 s 170; and the Health and Social Care Act 2008 (Commencement No 9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009, SI 2009/462, art 3. The provisions of the Public Health (Control of Disease) Act 1984 Pt IIA have effect in relation to the territorial sea adjacent to England or Wales: s 45S (added by the Health and Social Care Act 2008 s 129). At the date at which this volume states the law the Public Health (Control of Disease) Act 1984 s 45S is not fully in force in relation to Wales; and not all relevant subordinate legislation had been made.

3 Ie the Public Health (Control of Disease) Act 1984 Pt II (ss 10-45), Pt V (ss 54-56) (prospectively repealed): see PARA 885 et seq. See also PARA 884 note 2.

4 See PARA 919 et seq.

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(ii) Power to make Regulations

919. Health protection regulations relating to international travel etc.

As from a day to be appointed¹, the following provisions apply. The appropriate Minister² may by regulations³ make provision:

- 2130 (1) for preventing danger to public health from vessels⁴, aircraft, trains or other conveyances arriving at any place⁵;
- 2131 (2) for preventing the spread of infection or contamination⁶ by means of any vessel, aircraft, train or other conveyance leaving any place⁷; and
- 2132 (3) for giving effect to any international agreement or arrangement relating to the spread of infection or contamination⁸.

Such regulations⁹ may in particular include provision:

- 2133 (a) for the detention of conveyances¹⁰;
- 2134 (b) for the medical examination¹¹, detention, isolation or quarantine of persons¹²;
- 2135 (c) for the inspection, analysis, retention, isolation, quarantine or destruction of things¹³;
- 2136 (d) for the disinfection or decontamination of conveyances, persons or things or the application of other sanitary measures¹⁴;
- 2137 (e) for prohibiting or regulating the arrival or departure of conveyances and the entry or exit of persons or things¹⁵;
- 2138 (f) imposing duties on masters¹⁶, pilots, train managers and other persons on board conveyances and on owners and managers of ports, airports and other points of entry¹⁷; and
- 2139 (g) requiring persons to provide information or answer questions (including information or questions relating to their health)¹⁸.

1 At the date at which this volume states the law, the Public Health (Control of Disease) Act 1984 s 45B is only in force (from 21 July 2008) in so far as it confers power to make subordinate legislation: see the Health and Social Care Act 2008 s 170(1)(b). See also PARA 918.

2 'Appropriate Minister' means (1) the Secretary of State (see PARA 58), as respects England (including the sea adjacent to England out as far as the seaward boundary of the territorial sea); (2) the Welsh Ministers (see PARA 59), as respects Wales (including the sea adjacent to Wales out as far as that boundary): Public Health (Control of Disease) Act 1984 s 45T(6) (ss 45A, 45B, 45E, 45T added by the Health and Social Care Act 2008 s 129). An order made under the Government of Wales Act 2006 s 158(3) (orders to determine boundary of the sea adjacent to Wales) applies for the purposes of the Public Health (Control of Disease) Act 1984 s 45T(6) as it applies for the purposes of the 2006 Act: Public Health (Control of Disease) Act 1984 s 45T(7) (as so added). At the date at which this volume states the law s 45T is not fully in force in relation to Wales.

3 Regulations under the Public Health (Control of Disease) Act 1984 s 45B or 45C (see PARA 920) may not include provision requiring a person to undergo medical treatment: s 45E(1) (as added: see note 2). 'Medical treatment' includes vaccination and other prophylactic treatment: s 45E(2) (as so added). At the date at which this volume states the law s 45E is not fully in force in relation to Wales. As to regulations generally see PARA 930 et seq. At the date at which this volume states the law no regulations had been made under s 45B.

4 As to the meaning of 'vessel' see PARA 1 note 33.

5 Public Health (Control of Disease) Act 1984 s 45B(1)(a) (as added: see note 2). See also note 1. As to further provision about regulations under s 45B or s 45C (see PARA 920) see s 45F; and PARA 921.

6 For the purposes of the Public Health (Control of Disease) Act 1984 Pt IIA (ss 45A-45T), 'contamination' includes radiation: s 45A(1), (2) (as added: see note 2). Any reference to infection or contamination is a reference to infection or contamination which presents or could present significant harm to human health: s 45A(3) (as so added). Any reference to the spread of contamination includes a reference to the spread of any source of contamination: s 45A(4) (as so added). Any reference to disinfection or decontamination includes a reference to the removal of any vector, agent or source of the infection or contamination: s 45A(5) (as so added). Related expressions are to be read accordingly: s 45A(6) (as so added). At the date at which this volume states the law s 45A is not fully in force in relation to Wales.

7 Public Health (Control of Disease) Act 1984 s 45B(1)(b) (as added: see note 2). See also note 1.

8 Public Health (Control of Disease) Act 1984 s 45B(1)(c) (as added: see note 2). See also note 1.

9 ie regulations under the Public Health (Control of Disease) Act 1984 s 45B(1).

10 Public Health (Control of Disease) Act 1984 s 45B(2)(a) (as added: see note 2). See also note 1.

11 'Medical examination' includes microbiological, radiological and toxicological tests: Public Health (Control of Disease) Act 1984 s 45T(3) (as added: see note 2). See note 2.

12 Public Health (Control of Disease) Act 1984 s 45B(2)(b) (as added: see note 2). See also note 1.

13 Public Health (Control of Disease) Act 1984 s 45B(2)(c) (as added: see note 2). See also note 1. 'Thing' includes (1) human tissue; (2) a dead body or human remains; (3) animals; and (4) plant material: s 45T(5) (as added: see note 2). See note 2.

14 Public Health (Control of Disease) Act 1984 s 45B(2)(d) (as added: see note 2). See also note 1.

15 Public Health (Control of Disease) Act 1984 s 45B(2)(e) (as added: see note 2). See also note 1.

16 As to the meaning of 'master' see PARA 1 note 33.

17 Public Health (Control of Disease) Act 1984 s 45B(2)(f) (as added: see note 2). See also note 1.

18 Public Health (Control of Disease) Act 1984 s 45B(2)(g) (as added: see note 2). See also note 1.

UPDATE

919 Health protection regulations relating to international travel etc

NOTE 2--Government of Wales Act 2006 s 158(3) substituted: Marine and Coastal Access Act 2009 s 43(3).

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920. Health protection regulations in the domestic sphere.

The appropriate Minister¹ may by regulations² make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination³ in England and Wales⁴ (whether from risks originating there or elsewhere)⁵.

The above power⁶ may be exercised:

- 2140 (1) in relation to infection or contamination generally or in relation to particular forms of infection or contamination⁷; and
- 2141 (2) so as to make provision of a general nature, to make contingent provision or to make specific provision in response to a particular set of circumstances⁸.

Regulations⁹ may in particular include provision:

- 2142 (a) imposing duties on registered medical practitioners¹⁰ or other persons to record and notify cases or suspected cases of infection or contamination¹¹;
- 2143 (b) conferring on local authorities¹² or other persons functions in relation to the monitoring of public health risks¹³; and
- 2144 (c) imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health¹⁴.

The above power¹⁵ to make regulations is subject to a number of restrictions¹⁶.

1 As to the meaning of 'appropriate Minister' see PARA 919 note 2.

2 As to the restriction as to medical treatment on regulations under the Public Health (Control of Disease) Act 1984 s 45B or 45C see PARA 919 note 3. As to regulations made under s 45C see the Health Protection (Vaccination) Regulations 2009, SI 2009/38, which place an obligation on the Secretary of State to make arrangements to ensure that qualifying recommendations of the Joint Committee for Vaccination and Immunisation with regard to provision of national vaccination programmes are implemented.

3 As to the meaning of 'infection or contamination' see PARA 919 note 6.

4 As to the meanings of 'England' and 'Wales' see PARA 1 note 2.

5 Public Health (Control of Disease) Act 1984 s 45C(1) (ss 45C, 45D, 45T added by the Health and Social Care Act 2008 s 129). At the date at which this volume states the law the Public Health (Control of Disease) Act 1984 ss 45C, 45D, 45T are not fully in force in relation to Wales: see PARA 918. As to further provision about regulations under s 45B (see PARA 919) or s 45C see s 45F; and PARA 921. As to regulations generally see PARA 930 et seq.

As to regulations made see the Health Protection (Local Authority Powers) Regulations 2010, SI 2010/657 (made under the Public Health (Control of Disease) Act 1984 s 45C(1), (2), (3)(b), (c), (4)(a), (c)); the Health Protection (Part 2A Orders) Regulations 2010, SI 2010/658 (made under the Public Health (Control of Disease) Act 1984 s 45C(1), (2), (3)(b)); and the Health Protection (Notification) Regulations 2010, SI 2010/659 (made under the Public Health (Control of Disease) Act 1984 s 45C(1), (2), (3)(a)).

6 ie the power in the Public Health (Control of Disease) Act 1984 s 45C.

7 Public Health (Control of Disease) Act 1984 s 45C(2)(a) (as added: see note 5). See note 5.

8 Public Health (Control of Disease) Act 1984 s 45C(2)(b) (as added: see note 5). See note 5.

9 lie under the Public Health (Control of Disease) Act 1984 s 45C(1).

10 As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

11 Public Health (Control of Disease) Act 1984 s 45C(3)(a) (as added: see note 5). See note 5.

12 As to the meaning of 'local authority' see PARA 99.

13 Public Health (Control of Disease) Act 1984 s 45C(3)(b) (as added: see note 5). See note 5.

14 Public Health (Control of Disease) Act 1984 s 45C(3)(c) (as added: see note 5). See note 5.

The restrictions or requirements mentioned in s 45C(3)(c) include in particular: (1) a requirement that a child is to be kept away from school; (2) a prohibition or restriction relating to the holding of an event or gathering; (3) a restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the handling, transport or disposal of human remains; and (4) a special restriction or requirement: s 45C(4) (as so added). For the purposes of Part IIA (ss 45A-45T) (a) a 'special restriction or requirement' means a restriction or requirement which can be imposed by a justice of the peace by virtue of s 45G(2) (see PARA 922), s 45H(2) (see PARA 923) or s 45I(2) (see PARA 924); but (b) a restriction or requirement mentioned in s 45C (4)(a), (b) or (c) (see heads (1)-(3) above) is not to be regarded as a special restriction or requirement: ss 45C(6), 45T(4) (as so added).

15 See note 9.

16 Public Health (Control of Disease) Act 1984 s 45C(5) (as added: see note 5). See note 5. The restrictions are contained in s 45D.

Regulations under s 45C may not include provision imposing a restriction or requirement by virtue of s 45C(3) (c) (see head (c) in the text) unless the appropriate Minister considers, when making the regulations, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it: s 45D(1) (as so added). For these purposes, regulations 'impose a restriction or requirement' if the restriction or requirement is imposed without any such decision: s 45D(5)(b) (as so added).

Regulations under s 45C may not include provision enabling the imposition of a restriction or requirement by virtue of s 45C(3)(c) (see head (c) in the text) unless the regulations provide that a decision to impose such a restriction or requirement may only be taken if the person taking it considers, when taking the decision, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it: s 45D(2) (as so added). For these purposes, regulations 'enable the imposition of a restriction or requirement' if the restriction or requirement is imposed by virtue of a decision taken under the regulations by the appropriate Minister, a local authority or other person: s 45D(5)(a) (as so added). As to regulations made under s 45D(2) see the Health Protection (Local Authority Powers) Regulations 2010, SI 2010/657.

Regulations under the Public Health (Control of Disease) Act s 45C may not include provision imposing a special restriction or requirement mentioned in s 45G(2)(a), (b), (c) or (d) (see PARA 922): s 45D(3) (as so added).

Regulations under s 45C may not include provision enabling the imposition of a special restriction or requirement unless (1) the regulations are made in response to a serious and imminent threat to public health; or (2) imposition of the restriction or requirement is expressed to be contingent on there being such a threat at the time when it is imposed: s 45D(4) (as so added).

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921. Health protection regulations generally.

Further provision is made about health protection regulations¹.

Health protection regulations may:

- 2145 (1) confer functions on local authorities² and other persons³;
- 2146 (2) create offences⁴;
- 2147 (3) enable a court to order a person convicted of any such offence to take or pay for remedial action in appropriate circumstances⁵;
- 2148 (4) provide for the execution and enforcement of restrictions and requirements imposed by or under the regulations⁶;
- 2149 (5) provide for appeals from and reviews of decisions taken under the regulations⁷;
- 2150 (6) permit or prohibit the levy of charges⁸;
- 2151 (7) permit or require the payment of incentive payments, compensation and expenses⁹;
- 2152 (8) provide for the resolution of disputes¹⁰.

Health protection regulations may, for the purposes of giving effect to an international agreement or arrangement, amend any enactment¹¹.

Health protection regulations may not confer functions on officers of Revenue and Customs unless the regulations are made with the consent of the Commissioners for Her Majesty's Revenue and Customs¹².

Health protection regulations may not create certain offences¹³.

Domestic health protection regulations¹⁴ must provide for a right of appeal to a magistrates' court against any decision taken under the regulations by virtue of which a special restriction or requirement¹⁵ is imposed on or in relation to a person, thing¹⁶ or premises¹⁷.

Domestic health protection regulations¹⁸ which enable a special restriction or requirement to be imposed by virtue of a decision taken under the regulations must also provide that, if the restriction or requirement is capable of remaining in force in relation to any person, thing or premises for more than a specified period, a specified person may require the continuation of the restriction or requirement to be reviewed in accordance with the regulations at specified intervals by a person determined in accordance with the regulations¹⁹.

¹ The regulations under the Public Health (Control of Disease) Act 1984 s 45B (see PARA 919) or s 45C (see PARA 920): see s 45F(1) (ss 45F, 45T added by the Health and Social Care Act 2008 s 129). At the date at which this volume states the law the Public Health (Control of Disease) Act 1984 ss 45F, 45T are not fully in force in relation to Wales: see PARA 918. As to regulations made under s 45F see the Health Protection (Vaccination) Regulations 2009, SI 2009/38; and see PARA 920 note 2. As to regulations generally see PARA 930 et seq.

As to further regulations made see the Health Protection (Local Authority Powers) Regulations 2010, SI 2010/657 (made under the Public Health (Control of Disease) Act 1984 s 45F(2)(a), (b), (f), (g)); the Health Protection (Part 2A Orders) Regulations 2010, SI 2010/658 (made under the Public Health (Control of Disease) Act 1984 s 45F(2)(a)); and the Health Protection (Notification) Regulations 2010, SI 2010/659 (made under the Public Health (Control of Disease) Act 1984 s 45F(2)(a), (b)).

- 2 As to the meaning of 'local authority' see PARA 99.
 - 3 Public Health (Control of Disease) Act 1984 s 45F(2)(a) (as added: see note 1). See note 1.
 - 4 Public Health (Control of Disease) Act 1984 s 45F(2)(b) (as added: see note 1). See note 1.
 - 5 Public Health (Control of Disease) Act 1984 s 45F(2)(c) (as added: see note 1). See note 1.
 - 6 Public Health (Control of Disease) Act 1984 s 45F(2)(d) (as added: see note 1). See note 1.
 - 7 Public Health (Control of Disease) Act 1984 s 45F(2)(e) (as added: see note 1). See note 1.
 - 8 Public Health (Control of Disease) Act 1984 s 45F(2)(f) (as added: see note 1). See note 1.
 - 9 Public Health (Control of Disease) Act 1984 s 45F(2)(g) (as added: see note 1). See note 1.
 - 10 Public Health (Control of Disease) Act 1984 s 45F(2)(h) (as added: see note 1). See note 1.
 - 11 Public Health (Control of Disease) Act 1984 s 45F(3) (as added: see note 1). See note 1. 'Enactment' means an enactment whenever passed or made, and includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978): s 45T(2) (as so added).
 - 12 Public Health (Control of Disease) Act 1984 s 45F(4) (as added: see note 1). See note 1. As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.
 - 13 Public Health (Control of Disease) Act 1984 s 45F(5) (as added: see note 1). See note 1. The reference is to an offence triable on indictment or punishable with (1) imprisonment; (2) a fine exceeding £20,000; or (3) a further fine exceeding an amount equal to 2% of level 5 on the standard scale for each day on which the default continues after conviction: see s 45F(5) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.
 - 14 Ie regulations under the Public Health (Control of Disease) Act 1984 s 45C: see PARA 920.
 - 15 As to the meaning of 'special restriction or requirement' see PARA 920 note 14.
 - 16 As to the meaning of 'thing' see PARA 919 note 13.
 - 17 Public Health (Control of Disease) Act 1984 s 45F(6) (as added: see note 1). See note 1. As to the meaning of 'premises' see PARA 1 note 34.
 - 18 See note 14.
 - 19 Public Health (Control of Disease) Act 1984 s 45F(7) (as added: see note 1). See note 1.
- In relation to a special restriction or requirement mentioned in s 45G(2)(c) or (d) (see PARA 922) (1) the period specified by virtue of s 45F(7) and the intervals specified by virtue of that subsection must be 28 days or less; and (2) the regulations must require the continuation of the restriction or requirement to be reviewed without an application being made: s 45F(8) (as so added).

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(iii) Orders that may be made by a Justice of the Peace

922. Power to order health measures in relation to persons.

As from a day to be appointed¹, the following provisions apply. A justice of the peace may make an order² in relation to a person ('P') if the justice is satisfied that: (1) P is or may be infected or contaminated³; (2) the infection or contamination is one which presents or could present significant harm to human health⁴; (3) there is a risk that P might infect or contaminate others⁵; and (4) it is necessary to make the order in order to remove or reduce that risk⁶.

The order may impose on or in relation to P one or more of the following restrictions or requirements:

- 2153 (a) that P submit to medical examination⁷;
- 2154 (b) that P be removed to a hospital or other suitable establishment⁸;
- 2155 (c) that P be detained in a hospital or other suitable establishment⁹;
- 2156 (d) that P be kept in isolation or quarantine¹⁰;
- 2157 (e) that P be disinfected or decontaminated¹¹;
- 2158 (f) that P wear protective clothing¹²;
- 2159 (g) that P provide information or answer questions about P's health or other circumstances¹³;
- 2160 (h) that P's health be monitored and the results reported¹⁴;
- 2161 (i) that P attend training or advice sessions on how to reduce the risk of infecting or contaminating others¹⁵;
- 2162 (j) that P be subject to restrictions on where P goes or with whom P has contact¹⁶;
- 2163 (k) that P abstain from working or trading¹⁷.

A justice of the peace may make an order¹⁸ in relation to a person ('P') if the justice is satisfied that: (i) P is or may be infected or contaminated¹⁹; (ii) the infection or contamination is one which presents or could present significant harm to human health²⁰; (iii) there is a risk that a related party²¹ might infect or contaminate others²²; and (iv) it is necessary to make the order in order to remove or reduce that risk²³. The order may impose on or in relation to P a requirement that P provide information or answer questions about P's health or other circumstances (including, in particular, information or questions about the identity of a related party)²⁴.

An order under this provision²⁵ may also order a person with parental responsibility²⁶ for P to secure that P submits to or complies with the restrictions or requirements imposed by the order²⁷.

The appropriate Minister²⁸ must by regulations make provision about the evidence that must be available to a justice of the peace before the justice can be satisfied as mentioned above²⁹.

¹ At the date at which this volume states the law, the Public Health (Control of Disease) Act 1984 s 45G is only in force (from 21 July 2008) in so far as it confers power to make subordinate legislation: see the Health and Social Care Act 2008 s 170(1)(b). See also PARA 918.

As to regulations made see the Health Protection (Part 2A Orders) Regulations 2010, SI 2010/658 (made under the Public Health (Control of Disease) Act 1984 s 45G(7)).

2 le an order under the Public Health (Control of Disease) Act 1984 s 45G(2): see heads (a)-(k) in the text.

3 Public Health (Control of Disease) Act 1984 s 45G(1)(a) (s 45G added by the Health and Social Care Act 2008 s 129). See also note 1. As to the meaning of 'infection or contamination' see PARA 919 note 6. Any reference in the Public Health (Control of Disease) Act 1984 s 45G to a person who is infected or contaminated includes a reference to a person who carries the source of an infection or contamination, and any reference to infecting or contaminating others includes a reference to passing that source to others: s 45G(8) (as so added).

As to orders in respect of groups see PARA 925.

4 Public Health (Control of Disease) Act 1984 s 45G(1)(b) (as added: see note 3). See note 1.

5 Public Health (Control of Disease) Act 1984 s 45G(1)(c) (as added: see note 3). See note 1.

6 Public Health (Control of Disease) Act 1984 s 45G(1)(d) (as added: see note 3). See note 1.

7 Public Health (Control of Disease) Act 1984 s 45G(2)(a) (as added: see note 3). See note 1. As to the meaning of 'medical examination' see PARA 919 note 11.

8 Public Health (Control of Disease) Act 1984 s 45G(2)(b) (as added: see note 3). See note 1.

9 Public Health (Control of Disease) Act 1984 s 45G(2)(c) (as added: see note 3). See note 1.

10 Public Health (Control of Disease) Act 1984 s 45G(2)(d) (as added: see note 3). See note 1.

11 Public Health (Control of Disease) Act 1984 s 45G(2)(e) (as added: see note 3). See note 1. As to the meaning of 'disinfected or decontaminated' see PARA 919 note 6.

12 Public Health (Control of Disease) Act 1984 s 45G(2)(f) (as added: see note 3). See note 1.

13 Public Health (Control of Disease) Act 1984 s 45G(2)(g) (as added: see note 3). See note 1.

14 Public Health (Control of Disease) Act 1984 s 45G(2)(h) (as added: see note 3). See note 1.

15 Public Health (Control of Disease) Act 1984 s 45G(2)(i) (as added: see note 3). See note 1.

16 Public Health (Control of Disease) Act 1984 s 45G(2)(j) (as added: see note 3). See note 1.

17 Public Health (Control of Disease) Act 1984 s 45G(2)(k) (as added: see note 3). See note 1.

18 le under the Public Health (Control of Disease) Act 1984 s 45G(4).

19 Public Health (Control of Disease) Act 1984 s 45G(3)(a) (as added: see note 3). See note 1.

20 Public Health (Control of Disease) Act 1984 s 45G(3)(b) (as added: see note 3). See note 1.

21 For these purposes, 'related party' means (1) a person who has or may have infected or contaminated P; or (2) a person whom P has or may have infected or contaminated: Public Health (Control of Disease) Act 1984 s 45G(5) (as added: see note 3). See note 1.

22 Public Health (Control of Disease) Act 1984 s 45G(3)(c) (as added: see note 3). See note 1.

23 Public Health (Control of Disease) Act 1984 s 45G(3)(d) (as added: see note 3). See note 1.

24 Public Health (Control of Disease) Act 1984 s 45G(4) (as added: see note 3). See note 1.

25 le under the Public Health (Control of Disease) Act 1984 s 45G.

26 le within the meaning of the Children Act 1989: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134.

27 Public Health (Control of Disease) Act 1984 s 45G(6) (as added: see note 3). See note 1.

28 As to the meaning of 'appropriate Minister' see PARA 919 note 2.

29 Public Health (Control of Disease) Act 1984 s 45G(7) (as added: see note 3). See note 1. The reference is to s 45G(1) (see heads (1)-(4) in the text) or s 45G(3) (see heads (i)-(iv) in the text). As to power to make further provision by regulations see PARA 928. As to regulations generally see PARA 930 et seq.

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923. Power to order health measures in relation to things.

As from a day to be appointed¹, the following provisions apply. A justice of the peace may make an order² in relation to a thing³ if the justice is satisfied that: (1) the thing is or may be infected or contaminated⁴; (2) the infection or contamination is one which presents or could present significant harm to human health⁵; (3) there is a risk that the thing might infect or contaminate humans⁶; and (4) it is necessary to make the order in order to remove or reduce that risk⁷.

The order may impose in relation to the thing one or more of the following restrictions or requirements:

- 2164 (a) that the thing be seized or retained⁸;
- 2165 (b) that the thing be kept in isolation or quarantine⁹;
- 2166 (c) that the thing be disinfected or decontaminated¹⁰;
- 2167 (d) in the case of a dead body, that the body be buried or cremated¹¹;
- 2168 (e) in any other case, that the thing be destroyed or disposed of¹².

A justice of the peace may make an order¹³ in relation to a thing if the justice is satisfied that: (i) the thing is or may be infected or contaminated¹⁴; (ii) the infection or contamination is one which presents or could present significant harm to human health¹⁵; (iii) there is a risk that a related person or related thing might infect or contaminate humans¹⁶; and (iv) it is necessary to make the order in order to remove or reduce that risk¹⁷. The order may require the owner of the thing, or any person who has or has had custody or control of the thing, to provide information or answer questions about the thing (including, in particular, information or questions about where the thing has been or about the identity of any related person¹⁸ or the whereabouts of any related thing)¹⁹.

The appropriate Minister²⁰ may by regulations make provision about the evidence that must be available to a justice of the peace before the justice can be satisfied as mentioned above²¹.

1 At the date at which this volume states the law, the Public Health (Control of Disease) Act 1984 s 45H is only in force (from 21 July 2008) in so far as it confers power to make subordinate legislation: see the Health and Social Care Act 2008 s 170(1)(b). See also PARA 918.

2 Ie an order under the Public Health (Control of Disease) Act 1984 s 45H(2): see heads (a)-(e) in the text.

3 As to the meaning of 'thing' see PARA 919 note 13.

4 Public Health (Control of Disease) Act 1984 s 45H(1)(a) (s 45H added by the Health and Social Care Act 2008 s 129). See also note 1. As to the meaning of 'infection or contamination' see PARA 919 note 6. In the Public Health (Control of Disease) Act 1984 s 45H (1) any reference to being infected or contaminated includes a reference to carrying the source of an infection or contamination; and (2) any reference to infecting or contaminating humans, or a person or thing, includes a reference to passing the source of an infection or contamination to humans, or to the person or thing: s 45H(8) (as so added).

As to orders in respect of groups see PARA 925.

5 Public Health (Control of Disease) Act 1984 s 45H(1)(b) (as added: see note 4). See note 1.

6 Public Health (Control of Disease) Act 1984 s 45H(1)(c) (as added: see note 4). See note 1.

- 7 Public Health (Control of Disease) Act 1984 s 45H(1)(d) (as added: see note 4). See note 1.
- 8 Public Health (Control of Disease) Act 1984 s 45H(2)(a) (as added: see note 4). See note 1.
- 9 Public Health (Control of Disease) Act 1984 s 45H(2)(b) (as added: see note 4). See note 1.
- 10 Public Health (Control of Disease) Act 1984 s 45H(2)(c) (as added: see note 4). See note 1. As to the meaning of 'disinfected or decontaminated' see PARA 919 note 6.
- 11 Public Health (Control of Disease) Act 1984 s 45H(2)(d) (as added: see note 4). See note 1.
- 12 Public Health (Control of Disease) Act 1984 s 45H(2)(e) (as added: see note 4). See note 1.
- 13 le under the Public Health (Control of Disease) Act 1984 s 45H(4).
- 14 Public Health (Control of Disease) Act 1984 s 45H(3)(a) (as added: see note 4). See note 1.
- 15 Public Health (Control of Disease) Act 1984 s 45H(3)(b) (as added: see note 4). See note 1.
- 16 Public Health (Control of Disease) Act 1984 s 45H(3)(c) (as added: see note 4). See note 1.
- 17 Public Health (Control of Disease) Act 1984 s 45H(3)(d) (as added: see note 4). See note 1.
- 18 'Related person' means (1) a person who has or may have infected or contaminated the thing mentioned in the Public Health (Control of Disease) Act 1984 s 45H(3)(a) (see head (i) in the text); or (2) a person whom the thing has or may have infected or contaminated: s 45H(5) (as added: see note 4). See note 1.
- 19 Public Health (Control of Disease) Act 1984 s 45H(4) (as added: see note 4). See note 1. 'Related thing' means (1) a thing which has or may have infected or contaminated the thing mentioned in s 45H(3)(a) (see head (i) in the text); or (2) a thing which the thing mentioned in s 45H(3)(a) has or may have infected or contaminated: s 45H(6) (as so added).
- 20 As to the meaning of 'appropriate Minister' see PARA 919 note 2.
- 21 Public Health (Control of Disease) Act 1984 s 45H(7) (as added: see note 4). See note 1. The reference is to s 45H(1) (see heads (1)-(4) in the text) or s 45H(3) (see heads (i)-(iv) in the text). As to power to make further provision by regulations see PARA 928. As to regulations generally see PARA 930 et seq.

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924. Power to order health measures in relation to premises.

As from a day to be appointed¹, the following provisions apply. A justice of the peace may make an order² in relation to premises³ if the justice is satisfied that: (1) the premises are or may be infected or contaminated⁴; (2) the infection or contamination is one which presents or could present significant harm to human health⁵; (3) there is a risk that the premises might infect or contaminate humans⁶; and (4) it is necessary to make the order in order to remove or reduce that risk⁷.

The order may impose in relation to the premises one or more of the following restrictions or requirements:

- 2169 (a) that the premises be closed⁸;
- 2170 (b) that, in the case of a conveyance or movable structure, the conveyance or structure be detained⁹;
- 2171 (c) that the premises be disinfected or decontaminated¹⁰;
- 2172 (d) that, in the case of a building, conveyance or structure, the premises be destroyed¹¹.

A justice of the peace may make an order¹² in relation to premises if the justice is satisfied that: (i) the premises are or may be infected or contaminated or are or may be a place where infection or contamination was spread between persons or things¹³; (ii) the infection or contamination is one which presents or could present significant harm to human health¹⁴; (iii) there is a risk that a related person or related thing might infect or contaminate humans¹⁵; and (iv) it is necessary to make the order in order to remove or reduce that risk¹⁶. The order may require the owner or any occupier of the premises to provide information or answer questions about the premises (including, in particular, information about the identity of any related person¹⁷ or the whereabouts of any related thing)¹⁸.

The appropriate Minister¹⁹ may by regulations make provision about the evidence that must be available to a justice of the peace before the justice can be satisfied as mentioned above²⁰.

1 At the date at which this volume states the law, the Public Health (Control of Disease) Act 1984 s 45I is only in force (from 21 July 2008) in so far as it confers power to make subordinate legislation: see the Health and Social Care Act 2008 s 170(1)(b). See also PARA 918.

2 Ie under the Public Health (Control of Disease) Act 1984 s 45I(2): see heads (a)-(d) in the text.

3 As to the meaning of 'premises' see PARA 1 note 34.

4 Public Health (Control of Disease) Act 1984 s 45I(1)(a) (s 45I added by the Health and Social Care Act 2008 s 129). See also note 1. As to the meaning of 'infection or contamination' see PARA 919 note 6. In the Public Health (Control of Disease) Act 1984 s 45I (1) any reference to being infected or contaminated includes a reference to carrying the source of an infection or contamination; and (2) any reference to infecting or contaminating humans, or a person, thing or premises, includes a reference to passing the source of an infection or contamination to humans, or to the person, thing or premises: s 45I(8) (as so added). As to the meaning of 'thing' see PARA 919 note 13.

As to orders in respect of groups see PARA 925.

- 5 Public Health (Control of Disease) Act 1984 s 45I(1)(b) (as added: see note 4). See note 1.
- 6 Public Health (Control of Disease) Act 1984 s 45I(1)(c) (as added: see note 4). See note 1.
- 7 Public Health (Control of Disease) Act 1984 s 45I(1)(d) (as added: see note 4). See note 1.
- 8 Public Health (Control of Disease) Act 1984 s 45I(2)(a) (as added: see note 4). See note 1.
- 9 Public Health (Control of Disease) Act 1984 s 45I(2)(b) (as added: see note 4). See note 1.
- 10 Public Health (Control of Disease) Act 1984 s 45I(2)(c) (as added: see note 4). See note 1. As to the meaning of 'disinfected or decontaminated' see PARA 919 note 6.
- 11 Public Health (Control of Disease) Act 1984 s 45I(2)(d) (as added: see note 4). See note 1.
- 12 Ie under the Public Health (Control of Disease) Act 1984 s 45I(4).
- 13 Public Health (Control of Disease) Act 1984 s 45I(3)(a) (as added: see note 4). See note 1.
- 14 Public Health (Control of Disease) Act 1984 s 45I(3)(b) (as added: see note 4). See note 1.
- 15 Public Health (Control of Disease) Act 1984 s 45I(3)(c) (as added: see note 4). See note 1.
- 16 Public Health (Control of Disease) Act 1984 s 45I(3)(d) (as added: see note 4). See note 1.
- 17 'Related person' means (1) a person who has or may have infected or contaminated the premises; (2) a person who has or may have infected or contaminated a person who or thing which is or has been on the premises; (3) a person whom the premises have or may have infected or contaminated; or (4) a person who has or may have been infected or contaminated by a person who or thing which is or has been on the premises: Public Health (Control of Disease) Act 1984 s 45I(5) (as added: see note 4). See note 1.
- 18 Public Health (Control of Disease) Act 1984 s 45I(4) (as added: see note 4). See note 1. 'Related thing' means (1) a thing which has or may have infected or contaminated the premises; (2) a thing which has or may have infected or contaminated a person who or thing which is or has been on the premises; (3) a thing which the premises have or may have infected or contaminated; or (4) a thing which has or may have been infected or contaminated by a person who or thing which is or has been on the premises: s 45I(6) (as so added).
- 19 As to the meaning of 'appropriate Minister' see PARA 919 note 2.
- 20 Public Health (Control of Disease) Act 1984 s 45I(7) (as added: see note 4). See note 1. The reference is to s 45I(1) (see heads (1)-(4) in the text) or s 45I(3) (see heads (i)-(iv) in the text). As to power to make further provision by regulations see PARA 928. As to regulations generally see PARA 930 et seq.

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925. Orders in respect of groups.

As from a day to be appointed¹, the following provisions apply. The powers in the provisions in regard to health measures in relation to persons, things and premises² include power to make an order in relation to a group of persons, things³ or premises⁴.

For those purposes, the relevant provisions have effect with certain revisions⁵.

1 At the date at which this volume states the law, the Public Health (Control of Disease) Act 1984 s 45J is only in force (from 21 July 2008) in so far as it confers power to make subordinate legislation: see the Health and Social Care Act 2008 s 170(1)(b). See also PARA 918.

2 Ie the Public Health (Control of Disease) Act 1984 ss 45G, 45H, 45I: see PARAS 922-924.

3 As to the meaning of 'thing' see PARA 919 note 13.

4 Public Health (Control of Disease) Act 1984 s 45J(1) (s 45J added by the Health and Social Care Act 2008, s 129). See also note 1. As to the meaning of 'premises' see PARA 1 note 34.

5 See the Public Health (Control of Disease) Act 1984 s 45J(2) (as added: see note 4); and see below. See note 1.

In s 45G (see PARA 922) (1) in s 45G(1)(a), (c), (3)(a), the reference to P is a reference to each person in the group; and (2) in s 45G(2), (4), any reference to P is a reference to any one or more of the persons in the group: s 45J(3) (as so added).

In s 45H (see PARA 923) (a) in s 45H(1)(a), (c), (3)(a), the reference to the thing is a reference to each thing in the group; and (b) in s 45H(2), (4) any reference to the thing is a reference to any one or more of the things in the group: s 45J(4) (as so added).

In s 45I (see PARA 924) (i) in s 45I(1)(a), (c), (3)(a), the reference to the premises is a reference to each set of premises in the group; and (ii) in s 45I(2), (4), any reference to the premises is a reference to any one or more of the sets of premises in the group: s 45J(5) (as so added).

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926. Part IIA orders generally.

As from a day to be appointed¹, the following provisions apply.

A Part IIA order² may include, in addition to the restrictions or requirements mentioned in the provision under which it is made, such other restrictions or requirements as the justice considers necessary for the purpose of reducing or removing the risk in question³.

A restriction or requirement contained in a Part IIA order may be expressed to take effect subject to conditions specified in the order⁴. Two or more Part IIA orders may be combined in a single order⁵. A Part IIA order may contain such directions as the justice considers appropriate to give effect to it⁶. A Part IIA order may order the payment of compensation or expenses in connection with the taking of measures pursuant to the order⁷. A Part IIA order is authority for those persons to whom it is addressed to do such things as may be necessary to give effect to it⁸.

A Part IIA order must specify the period for which any restriction or requirement imposed by or under the order is to remain in force⁹. That period may be extended by further order of a justice of the peace¹⁰.

In relation to restrictions or requirements relating to being detained in hospital or kept in isolation or quarantine¹¹, neither the period specified¹² nor the period of any extension¹³ may exceed 28 days or such shorter period as the appropriate Minister¹⁴ may by regulations prescribe¹⁵.

The appropriate Minister may by regulations prescribe, in relation to any other restrictions or requirements, the maximum period which may be specified¹⁶ and the maximum period of any extension¹⁷.

1 At the date at which this volume states the law, the Public Health (Control of Disease) Act 1984 ss 45K, 45L are only in force (from 21 July 2008) in so far as they confer power to make subordinate legislation: see the Health and Social Care Act 2008 s 170(1)(b). See also PARA 918.

As to regulations made see the Health Protection (Part 2A Orders) Regulations 2010, SI 2010/658 (made under the Public Health (Control of Disease) Act 1984 s 45L(4)).

2 I.e. orders under the Public Health (Control of Disease) Act 1984 ss 45G, 45H and 45I: see PARAS 922-924.

3 Public Health (Control of Disease) Act 1984 s 45K(1), (2) (ss 45K, 45L added by the Health and Social Care Act 2008 s 129). See also note 1.

4 Public Health (Control of Disease) Act 1984 s 45K(3) (as added: see note 3). See note 1.

5 Public Health (Control of Disease) Act 1984 s 45K(4) (as added: see note 3). See note 1.

6 Public Health (Control of Disease) Act 1984 s 45K(5) (as added: see note 3). See note 1.

Without prejudice to s 45K(5), (1) a Part IIA order may, if the justice is satisfied as mentioned in s 61(4) (see PARA 140), authorise anything which may be authorised by warrant under s 61(3) (see PARA 140); and (2) if the order does so, s 62(1), (1A) (see PARA 140) have effect as if (a) the order were a warrant issued under s 61; and (b) the person so authorised were a proper officer: s 45K(6) (as so added).

7 Public Health (Control of Disease) Act 1984 s 45K(7) (as added: see note 3). See note 1.

- 8 Public Health (Control of Disease) Act 1984 s 45K(8) (as added: see note 3). See note 1.
- 9 Public Health (Control of Disease) Act 1984 s 45L(1) (as added: see note 3). See note 1.
- 10 Public Health (Control of Disease) Act 1984 s 45L(2) (as added: see note 3). See note 1.
- 11 le restrictions or requirements mentioned in the Public Health (Control of Disease) Act 1984 s 45G(2)(c) or (d): see PARA 922.
- 12 le under the Public Health (Control of Disease) Act 1984 s 45J(1).
- 13 le under the Public Health (Control of Disease) Act 1984 s 45J(2).
- 14 As to the meaning of 'appropriate Minister' see PARA 919 note 2.
- 15 Public Health (Control of Disease) Act 1984 s 45L(3) (as added: see note 3). See note 1. As to power to make further provision by regulations see PARA 928. As to regulations generally see PARA 930 et seq.
- 16 See note 12.
- 17 Public Health (Control of Disease) Act 1984 s 45L(4) (as added: see note 3). See note 1. The reference is to any extension under s 45J(2). See note 15.

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927. Procedure for making, varying and revoking Part IIA orders.

As from a day to be appointed¹, the following provisions apply.

The power of a justice of the peace to make a Part IIA order² is exercisable on the application of a local authority³. Local authorities must co-operate with each other in deciding which of them should apply for a Part IIA order in any particular case⁴.

The appropriate Minister⁵ must by regulations⁶ require a local authority to give notice to such persons as may be prescribed by the regulations of the making of an application for a Part II order⁷.

A Part IIA order may be varied or revoked by a justice of the peace on the application of (1) an affected person⁸; (2) a local authority; or (3) any other authority with the function of executing or enforcing the order in question⁹.

Variation or revocation of a Part IIA order does not invalidate anything done under the order prior to the variation or revocation¹⁰.

1 At the date at which this volume states the law, the Public Health (Control of Disease) Act 1984 s 45M is only in force (from 21 July 2008) in so far as it confers power to make subordinate legislation: see the Health and Social Care Act 2008 s 170(1)(b). See also PARA 918.

As to regulations made see the Health Protection (Part 2A Orders) Regulations 2010, SI 2010/658 (made under the Public Health (Control of Disease) Act 1984 s 45M(3)).

2 As to the meaning of 'Part IIA order' see PARA 926.

3 Public Health (Control of Disease) Act 1984 s 45M(1) (added by the Health and Social Care Act 2008 s 129). See also note 1. As to the meaning of 'local authority' see PARA 99.

4 Public Health (Control of Disease) Act 1984 s 45M(2) (as added: see note 3). See note 1.

5 As to the meaning of 'appropriate Minister' see PARA 919 note 2.

6 In the Public Health (Control of Disease) Act 1984 s 45M 'regulations' means regulations made by the appropriate Minister: s 45M(11) (as added: see note 3). See note 1. As to power to make further provision by regulations see PARA 928. As to regulations generally see PARA 930 et seq.

7 Public Health (Control of Disease) Act 1984 s 45M(3) (as added: see note 3). See note 1. However this is subject to s 45M(4). If a justice of the peace considers it necessary to do so, the justice may make a Part IIA order without a person having been given such notice as is otherwise required to be given to that person under rules of court or regulations under s 45M(3): s 45M(4) (as so added).

8 As to affected persons see the Public Health (Control of Disease) Act 1984 s 45M(6)-(9) (as added: see note 3). See note 1.

In the case of an order under s 45G (see PARA 922), the following persons are affected persons: (1) P; (2) a person with parental responsibility (within the meaning of the Children Act 1989) for P; (3) P's husband, wife or civil partner; (4) a person living with P as P's husband, wife or civil partner; and (5) such other persons as may be prescribed by regulations: s 45M(6) (as so added). See note 6.

In the case of an order under s 45H(2) (see PARA 923), the following persons are affected persons; (a) the owner of the thing; (b) any person with custody or control of the thing; and (c) such other persons as may be prescribed by regulations: s 45M(7) (as so added). As to the meaning of 'thing' see PARA 919 note 13.

In the case of an order under s 45I(2) (see PARA 924), the following persons are affected persons: (i) the owner of the premises; (ii) any occupier of the premises; and (iii) such other persons as may be prescribed by regulations: s 45M(8) (as so added). As to the meaning of 'premises' see PARA 1 note 34.

In the case of an order under s 45H(4) (see PARA 923) or s 45I(4) (see PARA 924), the person required to provide information or answer questions and such other persons as may be prescribed by regulations are affected persons: s 45M(9) (as so added).

9 Public Health (Control of Disease) Act 1984 s 45M(5) (as added: see note 3). See note 1.

10 Public Health (Control of Disease) Act 1984 s 45M(10) (as added: see note 3). See note 1.

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928. Power to make further provision by regulations.

As from a day to be appointed¹, the following provisions apply.

The appropriate Minister may² by regulations make provision about the taking of measures pursuant to Part IIA orders³.

The regulations may in particular make provision about:

- 2173 (1) the type of investigation which may be carried out as part of a medical examination⁴;
- 2174 (2) the manner in which measures are to be taken⁵;
- 2175 (3) who is to be responsible for executing and enforcing measures⁶;
- 2176 (4) who is to be liable for the costs of measures⁷;
- 2177 (5) the payment of compensation or expenses in connection with the taking of measures⁸.

However the regulations may not confer functions on officers of Revenue and Customs to execute or enforce Part IIA orders unless the regulations are made with the consent of the Commissioners for Her Majesty's Revenue and Customs⁹.

1 At the date at which this volume states the law, the Public Health (Control of Disease) Act 1984 s 45N is only in force (from 21 July 2008) in so far as it confers power to make subordinate legislation: see the Health and Social Care Act 2008 s 170(1)(b). See also PARA 918.

As to regulations made see the Health Protection (Part 2A Orders) Regulations 2010, SI 2010/658 (made under the Public Health (Control of Disease) Act 1984 s 45N(1), (2)(b)).

2 As to the meaning of 'appropriate Minister' see PARA 919 note 2.

3 Public Health (Control of Disease) Act 1984 s 45N(1) (s 45N added by the Health and Social Care Act 2008 s 129). See also note 1. As to the meaning of 'Part IIA order' see PARA 926. As to regulations generally see PARA 930 et seq. At the date at which this volume states the law no such regulations had been made.

4 Public Health (Control of Disease) Act 1984 s 45N(2)(a) (as added: see note 3). See note 1. As to the meaning of 'medical examination' see PARA 919 note 11.

5 Public Health (Control of Disease) Act 1984 s 45N(2)(b) (as added: see note 3). See note 1.

6 Public Health (Control of Disease) Act 1984 s 45N(2)(c) (as added: see note 3). See note 1.

7 Public Health (Control of Disease) Act 1984 s 45N(2)(d) (as added: see note 3). See note 1.

8 Public Health (Control of Disease) Act 1984 s 45N(2)(e) (as added: see note 3). See note 1.

9 Public Health (Control of Disease) Act 1984 s 45N(3) (as added: see note 3). See note 1. As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

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929. Enforcement of Part IIA orders.

As from a day to be appointed¹, the following provisions apply.

A person commits an offence if the person: (1) fails without reasonable excuse to comply with a restriction or requirement imposed by or under a Part IIA order²; or (2) wilfully obstructs anyone acting in the execution of a Part IIA order³. A person guilty of an offence⁴ is liable on summary conviction to a fine⁵.

If (a) a person is convicted of an offence⁶; and (b) the court by which the person is convicted is satisfied that the failure or wilful obstruction constituting the offence has caused premises⁷ or things⁸ to become infected or contaminated⁹ or otherwise damaged them in a material way, the court may, if it considers it appropriate to do so, order the person to take or pay for such remedial action as may be specified in the order¹⁰.

If (i) a Part IIA order imposes a requirement that a person be detained or kept in isolation or quarantine in a place¹¹; and (ii) the person leaves that place contrary to the requirement¹², a constable¹³ may take the person into custody and return the person to that place¹⁴.

1 At the date at which this volume states the law, the Public Health (Control of Disease) Act 1984 s 450 is only in force (from 21 July 2008) in so far as it confers power to make subordinate legislation: see the Health and Social Care Act 2008 s 170(1)(b). See also PARA 918.

2 Public Health (Control of Disease) Act 1984 s 450(1)(a) (s 450 added by the Health and Social Care Act 2008 s 129). See also note 1. As to the meaning of 'Part IIA order' see PARA 926.

3 Public Health (Control of Disease) Act 1984 s 450(1)(b) (as added: see note 2). See note 1.

4 Ie under the Public Health (Control of Disease) Act 1984 s 45(1).

5 Public Health (Control of Disease) Act 1984 s 450(2) (as added: see note 2). See note 1. The reference is to a fine not exceeding £20,000: see s 450(2) (as so added).

6 See note 4.

7 As to the meaning of 'premises' see PARA 1 note 34.

8 As to the meaning of 'thing' see PARA 919 note 13.

9 As to the meaning of 'infected or contaminated' see PARA 919 note 6.

10 Public Health (Control of Disease) Act 1984 s 450(3) (as added: see note 2). See note 1.

11 Public Health (Control of Disease) Act 1984 s 450(4)(a) (as added: see note 2). See note 1.

12 Public Health (Control of Disease) Act 1984 s 450(4)(b) (as added: see note 2). See note 1.

13 As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

14 Public Health (Control of Disease) Act 1984 s 450(5) (as added: see note 2). See note 1. However a person may not be taken into custody under s 450(5) after expiry of the period for which the requirement is in force: s 450(6) (as so added).

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(iv) Regulations Generally

930. General provision about regulations.

A power to make regulations under Part IIA of the Public Health (Control of Disease) Act 1984¹ is exercisable by statutory instrument².

A power to make regulations under Part IIA includes power to make different provision for different cases or different areas³.

1 Ie the Public Health (Control of Disease) Act 1984 Pt IIA (ss 45A-45T).

2 Public Health (Control of Disease) Act 1984 s 45P(1) (s 45P added by the Health and Social Care Act 2008 s 129). At the date at which this volume states the law the Public Health (Control of Disease) Act 1984 s 45P is not fully in force in relation to Wales. See also PARA 918.

3 Public Health (Control of Disease) Act 1984 s 45P(2) (as added: see note 2). See note 2.

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931. Parliamentary control.

An instrument containing regulations under Part IIA of the Public Health (Control of Disease) Act 1984¹ is subject to annulment (1) in the case of English regulations, in pursuance of a resolution of either House of Parliament²; (2) in the case of Welsh regulations, in pursuance of a resolution of the National Assembly for Wales³.

If an instrument, or a draft of an instrument, containing regulations under health protection regulations in regard to international travel or in the domestic sphere⁴ would, apart from this provision⁵, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument⁶.

1 I.e. the Public Health (Control of Disease) Act 1984 Pt IIA (ss 45A-45T). There is an exception for an instrument to which s 45Q(4) (see below) applies: see s 45Q(1) (s 45Q added by the Health and Social Care Act 2008 s 129). At the date at which this volume states the law the Public Health (Control of Disease) Act 1984 s 45Q is not fully in force in relation to Wales. See also PARA 918.

Subject to s 45R (see PARA 932), an instrument to which s 45Q(4) applies may not be made unless (1) in the case of English regulations, a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament; (2) in the case of Welsh regulations, a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales: s 45Q(4) (as so added). In s 45Q 'English regulations' means regulations made by the Secretary of State (see PARA 58); 'Welsh regulations' means regulations made by the Welsh Ministers (see PARA 59): s 45Q(6) (as so added). As to the National Assembly for Wales see PARA 59.

Subject to s 45Q(3) (see below), s 45Q(4) (see above) applies to an instrument containing (whether alone or with other provisions) (a) regulations under s 45C (see PARA 920); (b) regulations which amend an enactment pursuant to s 45F(3) (see PARA 921); (c) the first regulations to be made under s 45G(7) (see PARA 922); (d) the first regulations to be made under s 45L(4) (see PARA 926); or (e) the first regulations to be made under s 45N (see PARA 928): s 45Q(2) (as so added).

Section 45Q(4) (see above) does not apply by virtue of s 45Q(2)(a) (see head (a) above) if the instrument contains a declaration that the person making it is of the opinion that the instrument does not contain any provision made by virtue of s 45C(3)(c) (see PARA 920) which imposes or enables the imposition of (i) a special restriction or requirement; or (ii) any other restriction or requirement which has or would have a significant effect on a person's rights: s 45Q(3) (as so added). As to the meaning of 'special restriction or requirement' see PARA 920 note 14.

2 Public Health (Control of Disease) Act 1984 s 45Q(1)(a) (as added: see note 1). See note 1.

3 Public Health (Control of Disease) Act 1984 s 45Q(1)(b) (as added: see note 1). See note 1.

4 I.e. regulations under the Public Health (Control of Disease) Act 1984 s 45B (see PARA 919) or s 45C (see PARA 920).

5 I.e. the Public Health (Control of Disease) Act 1984 s 45Q(5).

6 Public Health (Control of Disease) Act 1984 s 45Q(5) (as added: see note 1). See note 1.

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932. Emergency procedure.

Where this provision applies to an instrument¹, the instrument may be made without a draft having been laid and approved² if the instrument contains a declaration that the person making it is of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved³.

After an instrument is made⁴, it must be laid (1) in the case of English regulations⁵, before each House of Parliament⁶; (2) in the case of Welsh regulations,⁷ before the National Assembly for Wales⁸.

Regulations contained in such an instrument⁹ cease to have effect at the end of the period of 28 days¹⁰ beginning with the day on which the instrument is made unless, during that period, the instrument is approved (a) in the case of English regulations, by a resolution of each House of Parliament¹¹; (b) in the case of Welsh regulations, by a resolution of the National Assembly for Wales¹².

However if on any day during that period, on proceedings on a motion that (or to the effect that) the instrument be so approved, either House of Parliament or, as the case may be, the National Assembly for Wales comes to a decision rejecting the instrument, the regulations cease to have effect at the end of that day instead¹³.

1 The Public Health (Control of Disease) Act 1984 s 45R applies to an instrument to which s 45Q(4) (see PARA 931 note 1) applies by virtue of s 45Q(2)(a) or (b) (see PARA 931 note 1 heads (a), (b)): s 45R(1) (s 45R added by the Health and Social Care Act 2008 s 129). At the date at which this volume states the law the Public Health (Control of Disease) Act 1984 s 45R is not fully in force in relation to Wales. See also PARA 918.

2 *Ie* as mentioned in the Public Health (Control of Disease) Act 1984 s 45Q(4): see PARA 931 note 1.

3 Public Health (Control of Disease) Act 1984 s 45R(2) (as added: see note 1). See note 1.

4 *Ie* in accordance with the Public Health (Control of Disease) Act 1984 s 45R(2).

5 As to the meanings of 'English regulations' and 'Welsh regulations' see PARA 931 note 1; definitions applied by the Public Health (Control of Disease) Act 1984 s 45R(8) (as added: see note 1). See note 1.

6 Public Health (Control of Disease) Act 1984 s 45R(3)(a) (as added: see note 1). See note 1.

7 See note 5.

8 Public Health (Control of Disease) Act 1984 s 45R(3)(b) (as added: see note 1). See note 1. As to the National Assembly for Wales see PARA 59.

9 *Ie* in an instrument made in accordance with the Public Health (Control of Disease) Act 1984 s 45R(2).

10 In reckoning any such period of 28 days, no account is to be taken (1) in the case of English regulations, of any time during which Parliament is prorogued or dissolved or during which both Houses are adjourned for more than four days; (2) in the case of Welsh regulations, of any time during which the National Assembly for Wales is dissolved or is in recess for more than four days: Public Health (Control of Disease) Act 1984 s 45R(6) (as added: see note 1). See note 1.

11 Public Health (Control of Disease) Act 1984 s 45R(4)(a) (as added: see note 1). See note 1.

Section 45R(4), (5) does not (1) affect anything done in reliance on the regulations before they ceased to have effect; or (2) prevent the making of new regulations: s 45R(7) (as so added).

- 12 Public Health (Control of Disease) Act 1984 s 45R(4)(b) (as added: see note 1). See notes 1, 11.
- 13 Public Health (Control of Disease) Act 1984 s 45R(5) (as added: see note 1). See notes 1, 11.

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(5) PRECAUTIONS IN RELATION TO SHIPS AND AIRCRAFT

(i) Regulations

933. Making of regulations.

Until a day to be appointed¹, the power of the Secretary of State² to make regulations³ includes the power to make regulations: (1) for preventing danger to public health from vessels⁴ or aircraft arriving at any place⁵; and (2) for preventing the spread of infection by means of any vessel or aircraft leaving any place, so far as may be necessary or expedient for the purpose of carrying out any treaty, convention, arrangement or engagement with any other country⁶. Such regulations may provide for:

- 2178 (a) the signals to be displayed by vessels or aircraft having on board any case of epidemic, endemic or infectious disease⁷;
- 2179 (b) the questions to be answered by masters, pilots and other persons on board any vessel or aircraft as to cases of such disease on board during the voyage or on arrival⁸;
- 2180 (c) requiring persons alighting from aircraft to answer questions pertaining to their state of health or their contact with infection⁹;
- 2181 (d) the detention of vessels or aircraft and of persons on board them¹⁰;
- 2182 (e) the duties to be performed in cases of such diseases by masters, pilots and other persons on board vessels or aircraft¹¹,

and may authorise the making of charges and provide for the recovery of such charges and of any expenses incurred in disinfection¹².

This power has been separately exercised in relation to aircraft¹³ and to ships¹⁴; but nothing in the regulations applies to any ship or aircraft forming part of Her Majesty's armed forces, or the armed forces of any country within the Commonwealth or of the armed forces of certain other countries¹⁵, or to the officers and crew of such ships or aircraft, or to any aerodrome under the control of such forces¹⁶. Requirements are relaxed in respect of an aircraft which has commenced its voyage¹⁷ at a place within the excepted area¹⁸ and has not during its voyage alighted at any place outside that area¹⁹. In relation to any such aircraft the medical officer²⁰ may not exercise or perform certain powers and duties²¹ unless he is satisfied, or the Secretary of State has directed, that it is necessary because of danger to public health²²; and certain obligations affecting the commander²³, persons carried²⁴, and officers of Her Majesty's Revenue and Customs²⁵ or authorised officers²⁶ do not apply unless the medical officer has notified the person concerned that compliance is similarly necessary²⁷.

1 The Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) and Pt V (ss 54-56) are prospectively repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170(3). At the date at which this volume states the law no such day had been appointed. See also generally PARA 884 note 2.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the power to make regulations see PARA 885. As to the enforcement and execution of the regulations, and as to the power of entry, see PARA 885. As to the penalty for contravention of the regulations see PARA 885.

4 As to the meaning of 'vessel' see PARA 1 note 33.

5 Public Health (Control of Disease) Act 1984 s 13(1)(b) (prospectively repealed). See note 1. See also note 6.

6 Public Health (Control of Disease) Act 1984 s 13(1)(c) (prospectively repealed). See note 1. The Secretary of State may by any such regulations apply, with or without modifications, to any disease to which the regulations relate any enactment (including any enactment in the Public Health (Control of Disease) Act 1984) relating to the notification of disease or to notifiable diseases: see s 13(2) (prospectively repealed); and PARA 885. As to the regulations made see the text and notes 13-27. As to the meaning of 'notifiable disease' see PARA 893.

7 Public Health (Control of Disease) Act 1984 s 13(3)(a) (prospectively repealed). See note 1.

8 Public Health (Control of Disease) Act 1984 s 13(3)(b) (prospectively repealed). See note 1.

9 Public Health (Control of Disease) Act 1984 s 13(3)(c) (prospectively repealed). See note 1.

10 Public Health (Control of Disease) Act 1984 s 13(3)(d) (prospectively repealed). See note 1.

11 Public Health (Control of Disease) Act 1984 s 13(3)(e) (prospectively repealed). See note 1.

12 Public Health (Control of Disease) Act 1984 s 13(3) (prospectively repealed). See note 1.

13 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434. Nothing in the regulations affects the Immigration Act 1971 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**) or the Air Navigation Order 2005, SI 2005/1970, art 136 (Customs and Excise aerodromes) (see **AIR LAW** vol 2 (2008) PARA 180): see the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 37 (amended by SI 2007/1447; and SI 2007/1900). In applying any measures under the regulations the authorised officer must have regard to the need for freeing aircraft from control as quickly as possible: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 24. The regulations revoke previous regulations subject to savings for things duly done or suffered or any right, privilege, obligation or liability acquired, accrued or incurred under them: see reg 38, Sch 4.

14 See the Public Health (Ships) Regulations 1979, SI 1979/1435. Nothing in the regulations affects the Immigration Act 1971 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**): Public Health (Ships) Regulations 1979 SI 1979/1435, reg 43. The regulations revoke previous regulations subject to savings for things duly done or suffered or any right, privilege, obligation or liability acquired, accrued or incurred under them: see reg 44, Sch 6. As to fumigation see PARA 856; and as to the application to shipping of the prevention of damage by pests legislation see PARA 861. As to notifiable diseases generally see PARA 893 et seq. 'Ship' has the same meaning as 'ship' in the Merchant Shipping Act 1995 (see s 313; and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229) except that it includes a hovercraft within the meaning of the Hovercraft Act 1968 (see s 4(1); and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 381): Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1) (definition substituted by SI 2007/1446; and SI 2007/1901).

15 In any other country for the time being designated for the purposes of all the provisions of the Visiting Forces Act 1952 following s 1(2) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 137 et seq): see the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 3; and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 3 (substituted by SI 2007/1446; and SI 2007/1901).

16 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 3; and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 3 (substituted by SI 2007/1446; and SI 2007/1901).

17 'Voyage', in relation to an aircraft, means its flight from its point of origin via any intermediate points to its point of termination: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1).

18 'Excepted area' means all the territory of Belgium, Metropolitan France, Greece, the Republic of Ireland, Italy, Luxembourg, the Netherlands, Spain, and the United Kingdom, the Channel Islands and the Isle of Man: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1).

19 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 26 (amended by SI 2007/1447; and SI 2007/1900).

20 'Medical officer' means the medical officer of a responsible authority (see PARA 937 note 1), or any other medical practitioner appointed by such authority under the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 5 (see PARA 938): reg 2(1).

21 le powers and duties conferred or imposed by the Public Health (Aircraft) Regulations 1979, SI 1979/1434, regs 7, 8(1), (2), 9, 14(1), 18(2), 20, 21, 23: see PARAS 942-943, 946.

22 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 26(c) (amended by SI 2007/1447; and SI 2007/1900).

23 'Commander' means the person for the time being in command of an aircraft: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1). The obligations referred to in the text are those of regs 11, 25(1)(a) (see PARAS 941, 947): reg 26(a).

24 The obligations referred to in the text are those of the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 25(1)(b), (c) (see PARA 947): reg 26(b).

25 The regulations refer to customs officers, and 'customs officer' means an officer of Her Majesty's Revenue and Customs: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1) (definition substituted by SI 2007/1447; and SI 2007/1900). As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

The obligations referred to in the text are those of the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 16 (see PARAS 942, 946): reg 26(d) (amended by SI 2007/1447; and SI 2007/1900). The term is similarly defined for the purposes of the Public Health (Ships) Regulations 1979, SI 1979/1435: see reg 2(1) (definition substituted by SI 2007/1446; and SI 2007/1901).

26 'Authorised officer', in relation to aircraft, means the medical officer, the proper officer (see PARA 889 note 3) or any other officer authorised by the responsible authority under the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4 (see PARA 937) to enforce and execute any of the regulations: reg 2(1) (definition amended by SI 2007/1447; and SI 2007/1900). The obligations referred to in the text are those of the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 16 (see PARAS 942, 946): reg 26(d) (as amended: see note 25). As to the meaning of 'authorised officer', in relation to ships, see PARA 934 note 6.

27 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 26(a), (b), (d) (reg 26(d) as amended: see note 25).

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(ii) General Control

934. Ships and aircraft unwilling to comply with regulations.

The master¹ of a ship² on arrival³ or already in a district⁴ who is unwilling to comply with or submit to any provision of or requirement made under the regulations⁵ must notify the authorised officer⁶; and the commander⁷ of an aircraft on arrival or already at an aerodrome⁸ who is similarly unwilling must do likewise⁹. The authorised officer may then require the master or commander to remove the ship or aircraft immediately¹⁰; but, if the master or commander wishes before leaving the district or aerodrome to discharge cargo, disembark passengers or take on board fuel, water or stores, the authorised officer must permit him to do so, but may impose such conditions under the regulations as he considers necessary¹¹. When removal has been required by the authorised officer the ship must not during its voyage call at any other district, and the aircraft must not alight at any other place in England or Wales¹².

1 'Master' means the person for the time being in charge of a ship: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1). The two sets of 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

2 As to the meaning of 'ship' see PARA 933 note 14.

3 'Arrival', in relation to a ship, means the entry within the limits of jurisdiction of a district of a ship which has not during its voyage or since it last:

160 (1) called at a port outside the United Kingdom; or

161 (2) met with an offshore installation; or

162 (3) met with a ship which has proceeded from a foreign port,

been subjected elsewhere in the United Kingdom to measures provided for in the regulations or any corresponding regulations in force in Scotland or Northern Ireland, apart from any measure which may have been applied there to any person, baggage or cargo landed from the ship; and 'arrives' must be construed accordingly: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1). As to the meaning of 'United Kingdom' see PARA 1 note 2. 'Offshore installation' has the meaning set out on the Petroleum Act 1998 s 44 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1729); and 'foreign port' means a port or other coastal place outside the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1) (definition of 'offshore installation' substituted by SI 2007/1446; and SI 2007/1901).

4 'District' means: (1) a port health district (see PARA 102); or (2) a London borough or a district which abuts on waters forming part of a port established for the purposes of the enactments relating to customs but not within the jurisdiction of a port health authority (see PARA 102), and includes the waters on which it so abuts: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1).

5 Ie the regulations cited in PARA 933 notes 12-13.

6 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 42(1). 'Authorised officer', in relation to a ship, means the medical officer, the proper officer (see PARA 889 note 3) or any other officer authorised by the local authority under reg 4 (see PARA 937) to enforce and execute any of the regulations; 'medical officer' means the medical officer for a district or any other registered medical practitioner appointed by the local authority under reg 5 (see PARA 938); and 'local authority' means, in relation to a port health district the port health authority, and (1) in England, in relation to any other district (a) the district council, (b) the county council for the county in which a district is where there is no district council, (c) the London borough council for a London Borough, or

(d) the Common Council of the City of London for the City of London; (2) in relation to any other district in Wales (a) the county council, (b) the county borough council: reg 2(1) (definitions respectively amended and added by SI 2007/1446; and SI 2007/1901). See also PARA 937. As to the meaning of 'authorised officer, in relation to an aircraft, see PARA 933 note 26. As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

7 As to the meaning of 'commander' see PARA 933 note 23.

8 'Aerodrome' means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically, but does not include any area the use of which for affording facilities for the landing and departure of aircraft has been abandoned and has not been resumed: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1) (definition substituted by SI 2007/1447; and SI 2007/1900).

9 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 36(1). As to the meaning of 'authorised officer' in relation to aircraft see PARA 933 note 26.

10 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 36(1); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 42(1).

11 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 36(2); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 42(2).

12 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 36(3); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 42(3).

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935. Duty to comply with requirements.

Every person to whom the regulations¹ apply must comply with every direction, requirement or condition given, made or imposed by an authorised officer² or customs officer³ under the regulations and must furnish all such information⁴ as that officer may reasonably require⁵. Moreover, every person who has for the time being the custody or charge of a child or other person under disability must similarly comply with directions, requirements or conditions so given, made or imposed, and furnish any required information in respect of that child or other person⁶.

The commander⁷ of an aircraft may request a responsible authority⁸ to cause to be applied certain measures and may charge⁹ the commander for a service to apply such measures in so far as the service is for preventing danger to public health from an aircraft arriving or the spread of infection from an aircraft leaving an airport where international flights arrive or depart¹⁰. Similarly a local authority¹¹ may charge¹² the master¹³ of a ship¹⁴ for a service¹⁵ in so far as the service is for preventing danger to public health from a ship arriving in the district or the spread of infection from a ship leaving its district¹⁶.

1 Ie the regulations cited in PARA 933 notes 13-14.

2 As to the meaning of 'authorised officer' see PARAS 933 note 26, 934 note 6.

3 As to the meaning of 'customs officer' see PARA 933 note 25.

4 Ie including information as to his name and intended destination and address to which he is going on leaving an aerodrome or ship.

5 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 29; and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 35. The two sets of 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

6 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 29; and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 35.

7 As to the meaning of 'commander' see PARA 933 note 23.

8 As to the meaning of 'responsible authority' see PARA 937 note 1.

9 A charge for a service under the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 32(2), or the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 38(1) must not exceed the actual cost of the service rendered, must be published at least ten days in advance of being levied, must be described sufficiently so that a commander of an aircraft or the owner or master of the ship is reasonably informed of the likely amount of the charge and must not be discriminatory: see the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 32(3) (reg 32 substituted by SI 2007/1447; and SI 2007/1900); and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 38(3) (reg 38 substituted by SI 2007/1446; and SI 2007/1901). A responsible authority or local authority (as the case may be) may require the whole or part of the amount of a charge for a service under the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 32(2) or the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 38(1) to be paid or deposited with them before the service is performed: see Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 32(4) (as so substituted); and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 38(4) (as so substituted).

10 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 32(1), (2) (as substituted: see note 9). As to the supply of particulars of the measures for which a charge was made and the reason why the measures were taken see reg 32(5)-(7) (as so substituted).

11 As to the meaning of 'local authority' see PARA 934 note 6.

12 See note 9.

13 As to the meaning of 'master' see PARA 934 note 1.

14 As to the meaning of 'ship' see PARA 933 note 14.

15 le (1) the inspection of the ship, or the application of measures required to be applied to the ship, in connection with the issue of a ship sanitation certificate in respect of the ship; (2) the extension of the period of validity of a ship sanitation certificate; or (3) the application, at the master's request, of any other measure that the master of a ship is required by the Public Health (Ships) Regulations 1979, SI 1979/1435, to carry out: see reg 38(2) (as substituted: see note 9).

16 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 38(1) (as substituted: see note 9). As to the supply of particulars of the measures for which a charge was made and the reason why the measures were taken see reg 38(5)-(7) (as so substituted).

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936. Penalty for non-compliance.

Any person who wilfully neglects or refuses to obey or carry out, or obstructs the execution of, the regulations for preventing danger to public health from or the spread of infection by means of any vessel or aircraft arriving at or leaving any place¹ is, where no provision is made by the regulations, liable to a penalty². Mens rea is a necessary element, and the defendant must at least know the circumstances which will constitute the offence in order to be guilty of wilful non-compliance³.

1 Ie the regulations cited in PARA 933 notes 13-14.

2 See the Public Health (Control of Disease) Act 1984 s 15 (prospectively repealed); and PARA 885. The penalty is a fine not exceeding level 5 on the standard scale, and in the case of a continuing offence is a further fine not exceeding level 1 on the standard scale for every day on which the offence continues after conviction: see s 15. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

3 *Bullock v Turnbull* [1952] 2 Lloyd's Rep 303, DC.

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937. Authorities which are to enforce regulations.

The responsible authority¹, in the case of aircraft, and the local authority², in the case of ships, must enforce and execute the regulations³, and must make such inquiries and take such other steps as seem to it necessary for securing the proper exercise of its functions⁴.

The responsible authority for the purposes of the Public Health (Aircraft) Regulations 1979 is (1) at an aerodrome⁵ maintained by a county council, that council⁶; (2) at an aerodrome maintained by the council of a district⁷, that council, or, if so agreed⁸, any other council in whose county or district the aerodrome is wholly situated, or any port health authority⁹ in the district of which the aerodrome is wholly or partly situated¹⁰; (3) at any other aerodrome wholly situated in a district or port health district, the council or port health authority of that district, or, if the Secretary of State so directs¹¹, the council of the county in which it is situated¹²; (4) at any other aerodrome extending into more than one district or into a port health district, if the Secretary of State so directs, the council of any county in which the aerodrome is wholly or partly situated¹³; and (5) at any place other than an aerodrome, the port health authority if it is situated in a port health district¹⁴, or otherwise the council of the district in which it is situated¹⁵.

In relation to the local authority under the Public Health (Ships) Regulations 1979, any two local authorities may agree that one of them is to undertake the enforcement and execution of the whole or specified provisions of the regulations in the district of the other, provided that they first obtain the approval of the Secretary of State to the terms of the agreement¹⁶.

1 'Responsible authority', in relation to an aerodrome or other place, means the authority charged under the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4 (see the text and notes 5-15) with the duty of enforcing and executing the regulations: reg 2(1).

2 As to the meaning of 'local authority' see PARA 934 note 6.

3 Ie the regulations cited in PARA 933 notes 13-14.

4 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4(1), (4) (amended by SI 2007/1447; and SI 2007/1900); and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 4(1) (amended by SI 2007/1446; and SI 2007/1901). Either authority exercises its functions through the medical officer (see PARAS 933 note 20, 934 note 6) and such other officers as it may authorise in that behalf: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4(4); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 4(1) (both as so amended). As to the meaning of 'authorised officer' see PARAS 933 note 26, 934 note 6. Authorities' expenses are defrayed in the same manner as the expenses incurred by them in the execution and discharge of their other powers and duties: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 34; Public Health (Ships) Regulations 1979, SI 1979/1435, reg 40 (substituted by SI 2007/1446; and SI 2007/1901). The two sets of 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

5 As to the meaning of 'aerodrome' see PARA 934 note 8.

6 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4(1)(b).

7 'District' means the City of London, a London borough or a district: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1).

8 The agreement referred to in the text must be between the council maintaining the aerodrome and the council of the other county or district or port health authority, as the case may be: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4(1)(c).

9 As to port health authorities see PARA 102.

10 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4(1)(c).

11 The Secretary of State may attach such terms and conditions as he thinks fit to any direction given by him under these provisions: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4(2). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

12 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4(1)(d)(i).

13 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4(1)(d)(ii). Failing such direction, the responsible authority is such one of the councils or the port health authority as may be agreed between them on terms and conditions approved by the Secretary of State: reg 4(1)(d)(ii).

14 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4(1)(e)(i). As to port health districts see PARA 102.

15 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4(1)(e)(ii).

16 See the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 4(2) (substituted by SI 2007/1446; and SI 2007/1901). See also the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 4(3)-(5) (added by SI 2007/1446; and SI 2007/1901).

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938. Ancillary functions of authorities.

A responsible authority¹ other than the Secretary of State², in the case of aircraft, may, and if so required by the Secretary of State must: (1) appoint such registered medical practitioners³ in addition to its medical officer⁴ as are necessary for the proper enforcement and execution of the regulations⁵; (2) give directions from time to time as to the duties which those medical practitioners or any other officer authorised to enforce and execute the regulations must perform⁶; (3) at or in connection with a customs airport⁷, provide or arrange for the provision of premises or waiting rooms for the medical inspection and examination of persons, and premises for their temporary isolation under the regulations⁸; (4) arrange for the reception into a hospital of persons requiring to be removed to it under the regulations⁹; (5) arrange for the provision of means of transport for the conveyance of persons to any such premises or to a hospital¹⁰; (6) at or in connection with a customs airport where such facilities are likely to be needed, provide or arrange for the provision of apparatus or other means for cleansing, disinfecting and disinsecting ships or aircraft, persons and clothing or other articles, and deratting aircraft, and a laboratory for the examination of suspected material, or equipment for taking and dispatching such material for examination in a laboratory¹¹; (7) do all such other things as, in its opinion or that of the Secretary of State, are necessary to enable the provisions of the regulations to be complied with¹².

A local authority¹³, in the case of ships, may, and if so required by the Secretary of State must: (a) appoint such medical practitioners, in addition to their medical officer¹⁴, as may be necessary for the proper enforcement and execution of the regulations¹⁵; (b) give directions from time to time as to the duties which are to be performed by any medical practitioner so appointed or any other officer authorised to enforce and execute the regulations¹⁶; (c) provide or arrange for the provision of premises or waiting rooms for the medical inspection and examination of persons, premises for the temporary isolation of persons under the regulations, and apparatus or other means for cleansing, disinfecting or disinsecting ships, persons or clothing and other articles¹⁷; (d) arrange for the reception into hospital¹⁸ of persons requiring to be removed to a hospital under the regulations¹⁹; (e) arrange for the provision of means of transport for the conveyance of persons to any premises referred to in head (c) above or to a hospital²⁰; (f) do all such other things as in its opinion or the opinion of the Secretary of State, as the case may be, are necessary to enable the provisions of the regulations to be complied with²¹.

Authorised officers²² of any authority and customs officers may enter any premises²³, vessel²⁴ or aircraft for the purpose of executing or superintending the execution of the regulations²⁵.

1 As to the meaning of 'responsible authority' see PARA 937 note 1.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

4 As to the meaning of 'medical officer' see PARA 933 note 20.

5 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 5(a).

6 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 5(b). As to the meaning of 'authorised officer' see PARA 933 note 26.

7 'Customs airport' has the meaning assigned to the term 'customs and excise airport' in the Customs and Excise Management Act 1979 s 1(1) (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 935): Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1). The authorised officer at a customs airport must inform the customs officer of any measures applied by him or at his direction, under the regulations, to an aircraft, any person on it, or its stores, equipment or cargo: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 10. As to the meaning of 'customs officer' see PARA 933 note 25.

8 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 5(c)(i), (ii).

9 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 5(d).

10 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 5(e).

11 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 5(f)(i), (ii) (reg 5(f) amended by SI 2007/1447; and SI 2007/1900).

12 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 5(g).

13 As to the meaning of 'local authority' see PARA 937.

14 As to the meaning of 'medical officer' see PARA 934 note 6.

15 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 5(a) (reg 5 substituted by SI 2007/1446; and SI 2007/1901).

16 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 5(b) (as substituted: see note 15).

17 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 5(c)(i)-(iii) (as substituted: see note 15).

18 As to the meaning of 'hospital' see PARA 900 note 2.

19 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 5(d) (as substituted: see note 15).

20 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 5(e) (as substituted: see note 15).

21 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 5(f) (as substituted: see note 15).

22 As to the meaning of 'authorised officer' in this context see PARA 885 note 12.

23 As to the meaning of 'premises' see PARA 1 note 34.

24 As to the meaning of 'vessel' see PARA 1 note 33.

25 See the Public Health (Control of Diseases) Act 1984 s 13(5) (prospectively repealed); and PARA 885.

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(iii) Incoming Ships and Aircraft

939. Restrictions on boarding or leaving ships.

Where the authorised officer¹ so directs, or where the master² is required³ to make a report, no person other than the pilot, a customs officer⁴ or an immigration officer⁵ may, without the permission of the authorised officer, board or leave a ship⁶ until free pratique⁷ has been given⁸.

Before granting permission to a person to leave the ship, the authorised officer may require him to state his name, intended destination and address, and to give other information which the authorised office thinks necessary for transmission to the medical officer⁹ for the area of the intended destination¹⁰. If that person cannot state his intended destination and address or arrives, within a period not exceeding 14 days after landing to be specified by the authorised officer, at an address different from that which he has stated, he must on arrival at that address send particulars of it to the authorised officer¹¹.

1 As to the meaning of 'authorised officer' see PARA 934 note 6.

2 As to the meaning of 'master' see PARA 934 note 1.

3 Ie by the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(1) (a), (b) or (c): see PARA 941. The 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

4 As to the meaning of 'customs officer' see PARA 933 note 25.

5 'Immigration officer' means any person appointed to act as such under the Immigration Act 1971 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**): Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1). The same meaning is given by the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1).

6 As to the meaning of 'ship' see PARA 933 note 14.

7 'Free pratique' means permission for a ship to disembark and commence operation: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1).

8 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 17(1). The master must take all reasonable steps to secure compliance: reg 17(1). No offence is committed where a person boards a ship not knowing that it is a ship to which reg 17(1) applies: *Bullock v Turnbull* [1952] 2 Lloyd's Rep 303, DC (decided under earlier legislation).

9 As to the meaning of 'medical officer' see PARA 934 note 6.

10 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 17(2).

11 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 17(3).

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940. Radio permission to enter district.

An authorised officer¹ may, when he is satisfied by information received by radio, fax or email, or other appropriate means from a ship² from a foreign port³ before arrival⁴ in his district⁵, or by any other information, that the arrival of the ship will not result in or contribute towards the spread of infectious disease⁶, transmit free pratique⁷ to the master⁸ by radio or otherwise⁹.

1 As to the meaning of 'authorised officer' see PARA 934 note 6.

2 As to the meaning of 'ship' see PARA 933 note 14.

3 As to the meaning of 'foreign port' see PARA 934 note 3.

4 As to the meaning of 'arrival' see PARA 934 note 3.

5 As to the meaning of 'district' see PARA 934 note 4.

6 'Infectious disease' means any infectious or contagious disease other than venereal disease or tuberculosis: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1) (definition substituted by SI 2007/1446; and SI 2007/1901). A similar meaning is given by the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1) (definition substituted by SI 2007/1447; and SI 2007/1900). The two sets of 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

7 As to the meaning of 'free pratique' see PARA 939 note 7.

8 As to the meaning of 'master' see PARA 934 note 1.

9 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 12 (substituted by SI 2007/1446; and SI 2007/1901).

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941. Duties of ships' masters and aircraft commanders.

The master¹ of a ship² must report³ to the local authority: (1) various occurrences connected with death⁴ or illness⁵ on board ship before arrival⁶; (2) the presence on board of a person who is suffering from an infectious disease or who has symptoms which may indicate the presence of an infectious disease or tuberculosis⁷; (3) any other circumstances on board which are likely to cause the spread of infectious disease or other danger to public health⁸; and (4) the presence of animals⁹ or captive birds¹⁰, and the occurrence of mortality or sickness among such animals or birds¹¹.

Where a member of the crew¹² of an aircraft becomes aware of a certain event¹³ he must report it to the commander of the aircraft¹⁴.

The medical officer may require the commander of an aircraft to complete an appropriate declaration of health¹⁵. Where on the arrival of a ship, the master has a report to make¹⁶ or is directed by the medical officer¹⁷ to complete an appropriate declaration of health¹⁸ he must complete that declaration of health¹⁹.

If a ship arrives in a district²⁰ or calls at another district within four weeks after the master of the ship has delivered a declaration of health, the master must report to the authorised officer any case or suspected case of infectious disease or tuberculosis which has occurred on board since the declaration was delivered and which has not already been reported²¹.

The master of a ship on arrival or already in a district must: (a) answer all questions as to the health conditions on board which may be put to him by a customs officer or an authorised officer and furnish him with all such information and assistance as he may reasonably require for the purpose of the regulations; (b) notify the authorised officer immediately of any circumstances on board which are likely to cause the spread of infectious disease or tuberculosis, including in his notification particulars as to the sanitary condition of the ship and the presence on board of animals or captive birds of any species, or mortality or sickness among such animals or birds, on the ship; and (c) comply with the regulations, and with any directions or requirements of an authorised officer or a customs officer given or made for the purposes of the regulations²².

The commander of an aircraft at a customs airport must: (i) answer all questions as to the health conditions on board which may be put to him by an authorised officer or a customs officer visiting the aircraft, and furnish any such officer with all such information and assistance as he may reasonably require for the purposes of the regulations; (ii)(A) notify²³ immediately on arrival to an authorised officer any death on the aircraft during its voyage caused by any case of infectious disease or tuberculosis on the aircraft; or any circumstances on board which are likely to cause the spread of infectious disease or tuberculosis, or other danger to public health; (B) include in his notification under head (ii)(A) above particulars as to the presence or suspected presence on board of any animals or captive birds of any species; (iii) comply with the regulations, and with any directions or requirements of an authorised officer given or made for the purposes of these regulations²⁴.

1 As to the meaning of 'master' see PARA 934 note 1.

2 As to the meaning of 'ship' see PARA 933 note 14.

3 For the purposes of the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(1), the master must send by appropriate means before arrival, either directly to the local authority or through an agent approved by it, a radio message complying with the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(3): reg 13(2)(a) (reg 13(2) substituted by SI 2007/1446; and SI 2007/1901). If the ship is not so equipped, he must notify the local authority immediately on arrival of the presence on board of the infectious disease or tuberculosis, symptoms or other similar circumstances: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(2)(b) (as so substituted). Any radio message, fax, email or other communication sent for the purpose of reg 13 must be sent so as to reach the local authority not more than 12 hours, and whenever practicable not less than four hours, before the expected arrival of the ship: reg 13(3) (substituted by SI 2007/1446; and SI 2007/1901). As to the meaning of 'arrival' see PARA 934 note 3. As to the meaning of 'local authority' see PARA 937. As to the meaning of 'infectious disease' see PARA 940 note 6. The two sets of 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

4 Ie death otherwise than as the result of an accident: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(1)(a)(i).

5 Ie illness where the person who is ill has a temperature of 38° Centigrade or greater accompanied by a rash, glandular swelling or jaundice, or where such temperature persisted for more than 48 hours (Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(1)(a)(ii)); or illness where the person has or had diarrhoea severe enough to interfere with work or normal activities (reg 13(1)(a)(iii)).

6 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(1)(a).

7 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(1)(b) (amended by SI 2007/1446; and SI 2007/1901).

8 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(1)(c) (amended by SI 2007/1446; and SI 2007/1901).

9 'Animal' has the same meaning as in the Rabies (Control) Order 1974, SI 1974/2212, art 2(1), Sch 1 (see **ANIMALS** vol 2 (2008) PARA 1057): Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1). The same meaning is given by the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1). Among many other animals, this includes cats, cattle, dogs, goats, horses, lions, mice, moles, monkeys, pigs, rabbits, rats, sheep, squirrels and tigers.

10 'Captive birds' includes poultry: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 11(2). The same meaning is given by the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 11(2).

11 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(1)(d).

12 'Crew' means the personnel of an aircraft who are employed for duties on board: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1). See note 3.

13 Ie an event described in the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 12(1A), namely that there is on board the aircraft during a flight a person who (1) is suffering from an infectious disease or tuberculosis; or (2) has symptoms which may indicate the presence of an infectious disease, tuberculosis or other danger to public health: reg 12(1A) (reg 12(1A)-(1C) added by SI 2007/1447; and SI 2007/1900). Immediately following a report under the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 12(1) the commander of the aircraft must send a radio message or other communication about the event to one of the persons identified in reg 12(1C) at the first customs airport at which the aircraft is due to land: reg 12(1B) (as so added). The persons referred to at reg 12(1B) are (a) the authorised officer; (b) the manager of the airport; or (c) the owner of the airport: reg 12(1C) (as so added). As to the meaning of 'commander' see PARA 933 note 23. As to the meaning of 'customs airport' see PARA 938 note 7. As to the meaning of 'authorised officer' see PARA 933 note 26. As to the meaning of 'owner' see PARA 889 note 5.

14 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 12(1) (substituted by SI 2007/1447; and SI 2007/1900). If such radio message or other communication is sent to the authorised officer, he must immediately notify the customs officer of its contents: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 12(2) (amended by SI 2007/1447; and SI 2007/1900). As to the meaning of 'customs officer' see PARA 933 note 25. If such radio message or other communication is sent to the person in charge of the customs airport, he must immediately notify the authorised officer and the customs officer of its contents: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 12(3) (amended by SI 2007/1447; and SI 2007/1900). Before or immediately after the arrival of an aircraft, the owner or manager of an aerodrome, or any person deputed to act on his behalf, must inform the authorised officer of any aircraft arriving at that aerodrome which during its last flight landed at such aerodrome as may be notified by the medical officer: Public Health (Aircraft)

Regulations 1979, SI 1979/1434, reg 12(4), (5) (reg 12(4) amended by SI 2007/1447; and SI 2007/1900). As to the meaning of 'aerodrome' see PARA 934 note 8. As to the meaning of 'medical officer' see PARA 934 note 6.

15 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 12(6) (substituted by SI 2007/1447; and SI 2007/1900). The reference is to the Health Part of the Aircraft General Declaration in the form set out in the Public Health (Aircraft) Regulations 1979, SI 1979/1434, Sch 1 and the form so completed must be delivered to the authorised officer by the commander of the aircraft, or by a member of the crew or deputed to act on his behalf: reg 12(7) (amended by SI 2007/1447; and SI 2007/1900).

16 In accordance with the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(1)(a), (b) or (c): see heads (1)-(3) in the text. The master must deliver the declaration to the authorised officer who must forward it to the health authority: reg 15(2).

17 As to the meaning of 'medical officer' see PARA 933 note 20.

18 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 15(1)(a), (b), Sch 2 (maritime declaration of health, to be countersigned by the ship's surgeon if one is carried).

19 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 15(1) (amended by SI 2007/1446; and SI 2007/1901). The master must deliver the declaration to the authorised officer who must forward it to the local authority: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 15(2) (amended by SI 2007/1446; and SI 2007/1901). As to the meaning of 'authorised officer' see PARA 934 note 6.

20 As to the meaning of 'district' see PARA 934 note 4.

21 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 16 (amended by SI 2007/1446; and SI 2007/1901).

22 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 11(1)(a)-(c) (reg 11(1)(b) amended by SI 2007/1446; and SI 2007/1901). As to the penalties for non-compliance see PARA 936.

23 In addition to any message sent under the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 12.

24 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 11(1)(a)-(c) (reg 11(1)(b) substituted by SI 2007/1447; and SI 2007/1900). These requirements apply to aircraft at a customs airport or, with modifications, elsewhere: see PARA 947. They do not apply to any aircraft which has not alighted outside the excepted area unless the commander has been notified by the medical officer that compliance is necessary because of danger to public health: see the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 26(a); and PARA 933.

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942. Inspection and detention of ships and aircraft.

An authorised officer¹ may inspect any ship² on arrival³ or already in the district⁴, or any aircraft at a customs airport⁵; and he, in the case of a ship, and the medical officer⁶, in the case of an aircraft, must do so if notification⁷ of infectious disease has been given or when he has reasonable ground for believing that there is on board a case or suspected case of infectious disease⁸.

An authorised officer may detain or give notice in writing to a customs officer⁹ to detain any ship for medical inspection at its place of mooring¹⁰ or of discharge or loading¹¹. Ships taken or directed to a mooring station by an authorised officer must remain there until inspected by the medical officer¹². In particular, the master¹³ of an infected ship¹⁴, a suspected ship¹⁵ or any other ship in certain circumstances¹⁶ must take the ship to a mooring station unless an authorised officer otherwise allows or directs¹⁷; and the authorised officer may direct any ship from a foreign port¹⁸ to be taken to a mooring station on arrival, and may direct a ship to a mooring station if after arrival a case of plague, cholera, yellow fever, smallpox, rabies, viral haemorrhagic fever occurs or an animal infected with any such disease is discovered or suspected of being on board¹⁹.

The medical officer at a customs airport may cause to be detained for medical inspection an aircraft which he has reasonable grounds for believing may be an infected aircraft²⁰ or a suspected aircraft²¹ or one which has had on board during the voyage plague, cholera, yellow fever or smallpox in respect of which the aircraft has not outside the United Kingdom been subjected to appropriate measures equivalent to those provided for in the regulations²².

The medical officer must inspect the ship or aircraft and the persons on board as soon as possible after it has been detained²³; and he may continue the detention if necessary for the application of any further or additional measures which he is required to apply²⁴, or which, after inspection, he considers necessary²⁵.

The authorised officer at a customs airport must inform the customs officer of any measure applied by him or at his direction under the regulations to any aircraft or its stores, equipment or cargo²⁶.

1 As to the meaning of 'authorised officer' see PARAS 933 note 26, 934 note 6.

2 As to the meaning of 'ship' see PARA 933 note 14.

3 As to the meaning of 'arrival' see PARA 934 note 3.

4 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 7(1). As to the meaning of 'district' see PARA 934 note 4. The two sets of 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

5 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 7(1). As to the meaning of 'customs airport' see PARA 938 note 7. As to the application of these provisions to aircraft which have not been outside the excepted area (see PARA 933 note 18) see PARA 933; and as to their application to aircraft alighting elsewhere than at customs airports see PARA 947. See note 4.

6 As to the meaning of 'medical officer' see PARA 933 note 20. Another authorised officer may do so acting on the instructions of the medical officer: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 7(2).

7 lie under the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 12 or under the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 13(1)(a)(ii), (iii), (b) or (c): see PARA 941.

8 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 7(2); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 7(2). As to the meaning of 'infectious disease' see PARA 940 note 6. The inspection may include the taking from the ship or aircraft of samples of food and water for analysis or examination with a view to the treatment of persons affected with any epidemic, endemic or infectious disease and for preventing the spread of such diseases: see the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 7(4), (5) (respectively substituted and added by SI 2007/1447; and SI 2007/1900); and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 7(3), (4) (respectively substituted and added by SI 2007/1446; and SI 2007/1901). The ship or aircraft may be required to be brought or taken to some safe and convenient place for inspection: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 7(3); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 8.

9 As to the meaning of 'customs officer' see PARA 933 note 25. Detention by a customs officer must cease as soon as the ship has been inspected by the medical officer (see PARA 934 note 6), or, if such inspection has not commenced within 12 hours after detention, on the expiration of that period: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 27. Nothing in reg 27 affects the power of the authorised officer to continue the detention of a ship under reg 28 (see the text and notes 23-25): reg 27 proviso.

10 lie not being a mooring station. 'Mooring station' means a place, situated within the waters of a district (see PARA 934 note 4), which is specified by the local authority (see PARA 937) with the consent of a customs officer and the harbour master, or in such other district as the Secretary of State may allow, for the mooring of ships for medical inspection so that they have no contact with other ships or the shore: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1) (definition amended by SI 2007/1446; and SI 2007/1901). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

11 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 26.

12 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 25. See also reg 22 (ships from foreign ports); reg 23 (amended by SI 2007/1446; and SI 2007/1901) (direction by customs officer).

13 As to the meaning of 'master' see PARA 934 note 1.

14 'Infected ship' means: (1) a ship which has on board on arrival a case of plague, cholera, yellow fever, small pox, rabies or viral haemorrhagic fever; or (2) a ship on which a plague-infected rodent is found on arrival; or (3) a ship which has had on board during its voyage a case of human plague which developed more than six days after the embarkation of the person affected, or a case of cholera within five days before arrival, or a case of yellow fever or smallpox, and which has not before arrival been subjected in respect of such case to appropriate measures equivalent to those provided for in the Public Health (Ships) Regulations 1979, SI 1979/1435: reg 2(1) (definition amended by SI 2007/1446; and SI 2007/1901).

15 'Suspected ship' means: (1) a ship which, not having on board on arrival a case of human plague, has had on board during the voyage a case of that disease which developed within six days of the embarkation of the person affected; or (2) a ship on which there is evidence of abnormal mortality among rodents, the cause of which is unknown on arrival; or (3) a ship which has had on board during the voyage a case of cholera which developed more than five days before arrival; or (4) a ship which left within six days before arrival an area infected with yellow fever; or (5) a ship which has on board on arrival a person whom the medical officer considers may have been exposed to infection from Lassa fever, rabies, viral haemorrhagic fever or Marburg disease: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1).

16 lie where on any ship during its current voyage within the last four weeks before arrival a case of plague, cholera, yellow fever or smallpox in respect of which the ship has not outside the United Kingdom been subjected to appropriate measures equivalent to those provided for in the Public Health (Ships) Regulations 1979, SI 1979/1435: reg 21(1) (amended by SI 2007/1446; and SI 2007/1901).

17 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 21(1) (as amended: see note 16). When the authorised officer has reason to believe that a ship on arrival may be one to which reg 21(1) applies, he may direct the master to take it to a mooring station or to such other place as he considers desirable: reg 21(2).

18 As to the meaning of 'foreign port' see PARA 934 note 3.

19 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 24 (substituted by SI 2007/1446; and SI 2007/1901). As to the meaning of 'animal' see PARA 941 note 9.

20 'Infected aircraft' has a similar meaning to 'infected ship' (see note 14), save that head (3) is confined to smallpox: see the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1) (definition amended by SI 2007/1447; and SI 2007/1900).

21 'Suspected aircraft' means an aircraft: (1) from which a case of cholera occurring on board during the voyage has been removed before the aircraft's arrival and which has not before arrival been subjected to appropriate measures equivalent to those provided for in the regulations; or (2) which has on board on arrival a person whom the medical officer considers may have been exposed to infection from Lassa fever, rabies, viral haemorrhagic fever or Marburg disease: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1).

22 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 14(1) (amended by SI 2007/1447; and SI 2007/1900). If the medical officer so detains an aircraft he must inform the person in charge of the customs airport and send a notice in writing of such detention to the customs officer: reg 14(2). If the customs officer then visits the aircraft before the medical officer he must deliver the notice to the commander (see PARA 933 note 23) and take all reasonable steps to secure compliance with it: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 15. See also the Public Health (Aircraft) Regulations 1979, SI 1979/1434, regs 16, 17 (both amended by SI 2007/1447; and SI 2007/1900).

23 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 18(1); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 28(1). In the case of an aircraft the inspection must take place within three hours of the detention: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 18(1).

24 See PARA 943.

25 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 18(2); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 28(2).

26 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 10.

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943. Additional measures in relation to certain diseases.

Certain additional measures¹ are applicable on the arrival² (in the case of an aircraft, at a customs airport³) of: (1) any infected or suspected ship⁴ or aircraft⁵; (2) any ship or aircraft which has during its voyage⁶ been in an area infected with plague, cholera, yellow fever, Lassa fever, rabies, viral haemorrhagic fever or Marburg disease⁷; (3) any suspect for smallpox on a ship or aircraft other than an infected ship or aircraft⁸; (4) any other ship, or any other aircraft or person, when the relevant officer⁹ is satisfied that, notwithstanding that measures equivalent to those additional measures have been applied to the ship or aircraft or any person on board previously during the voyage, there is on board or has been on board since such previous application an infected person¹⁰ or suspect¹¹ and that it is necessary again to apply any such measure, or the medical officer has evidence¹² that such previous application was not effective¹³.

These additional measures may in particular cases empower the medical officer to require the disinfection and disinsecting¹⁴ of parts of the ship or aircraft, baggage¹⁵ and other articles and the deratting of ships¹⁶.

In addition, the authorised officer¹⁷ may require the master¹⁸ of a ship which has been taken or directed to a mooring station¹⁹ or detained because rodents have been discovered or there are reasonable grounds for suspecting that rodents are on board to take all practicable measures to prevent their escape²⁰.

If an authorised officer at an airport considers that there should be applied to an aircraft alighting there, or to any person carried on such aircraft, measures under the regulations, and that airport is not able to apply the measures, he may direct that the aircraft or the person proceed to a customs airport that is able to apply the measures²¹.

1 The additional to and without prejudice to any other provisions of the Public Health (Aircraft) Regulations 1979, SI 1979/1434, or the Public Health (Ships) Regulations 1979, SI 1979/1435. These additional provisions apply to the arrival of aircraft at a customs airport (Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 23) or with modifications at any other place (see reg 25; and PARA 947). They do not apply to any aircraft which has not been outside the excepted area (see PARA 933 note 18) unless necessary because of danger to public health: see reg 26; and PARA 933. The two sets of 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

2 As to the meaning of 'arrival' in relation to ships see PARA 934 note 3.

3 As to the meaning of 'customs airport' see PARA 938 note 7.

4 As to the meaning of 'ship' see PARA 933 note 14. As to the meaning of 'infected ship' see PARA 942 note 14; and as to the meaning of 'suspected ship' see PARA 942 note 15.

5 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 23(a); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 32(a). As to the meaning of 'infected aircraft' see PARA 942 note 20; and as to the meaning of 'suspected aircraft' see PARA 942 note 21.

6 As to the meaning of 'voyage' in relation to aircraft see PARA 933 note 17.

7 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 23(b); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 32(b).

8 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 23(c); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 32(c).

9 le the authorised officer (see PARA 934 note 6) in the case of a ship and the medical officer (see PARA 933 note 20) in the case of an aircraft.

10 'Infected person' means a person suffering from plague, cholera, yellow fever or smallpox or who is considered by the medical officer to be infected with such a disease or with some other infection or contagious disease other than venereal disease or tuberculosis: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1) (definition substituted by SI 2007/1447; and SI 2007/1900); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1) (definition substituted by SI 2007/1446; and SI 2007/1901). As to the meaning of 'medical officer' see PARAS 933 note 20, 934 note 6.

11 'Suspect' means a person (not being an infected person) who is considered by the medical officer as having been exposed to infection by an infectious disease (see PARA 940 note 6) and is considered capable of spreading that disease: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1).

12 The Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 23 uses the term 'reasonable grounds' instead of 'evidence'.

13 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 23(d); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 32(d). The Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 23 requires a belief that the previous application was not substantially effective.

14 'Disinsecting' means the operation in which measures are taken to kill the insect vectors of human disease: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1).

15 'Baggage' means the personal effects of a traveller or of a member of the crew: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1).

16 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 23, Sch 2 (amended by SI 2007/1447; and SI 2007/1900); and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 32, Sch 4 (amended by SI 2007/1446; and SI 2007/1901).

17 As to the meaning of 'authorised officer' see PARAS 933 note 26, 934 note 6.

18 As to the meaning of 'master' see PARA 934 note 1.

19 As to the meaning of 'mooring station' see PARA 942 note 10.

20 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 29.

21 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 22(1) (reg 22 substituted by SI 2007/1447; and SI 2007/1900). If an authorised officer gives such a direction, he must give the commander of the aircraft concerned notice in writing of the direction including the reasons for the direction: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 22(2) (as so substituted). As to the meaning of 'commander' see PARA 933 note 23.

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944. Sanitation control of ships.

Upon receipt of an application in writing from the owner¹ of a ship² or from the master³ acting for or on behalf of the owner for a ship sanitation certificate⁴ in respect of the ship:

- 2183 (1) if the ship is within the area of an authorised port⁵, an authorised officer⁶ must (a) inspect the ship to prevent danger to public health or the spread of infection with a view to issuing a ship sanitation certificate⁷; and (b) either carry out or cause to be carried out under the supervision of an authorised officer control measures necessary for the control of danger to public health or the spread of infection with a view to issuing a ship sanitation certificate⁸; or otherwise take or cause to be taken any steps which he considers necessary to satisfy himself that the ship does not present a danger to public health and is free of infection⁹;
- 2184 (2) if the ship is not within the area of an authorised port, an authorised officer must (a) consult with a customs officer¹⁰; and (b) direct the ship to proceed at the risk of the owner of the ship to an area of an authorised port convenient to the ship and the customs officer¹¹.

If an authorised officer after he has inspected a ship under head (1)(a) above is satisfied that the ship is exempt from control measures, he must issue or cause to be issued a ship sanitation control exemption certificate¹²; or that control measures have been completed to his satisfaction, he must issue or cause to be issued a ship sanitation control certificate¹³, and note or cause to be noted on the certificate the evidence found and the control measures taken¹⁴.

If the master of a ship which during its voyage has been in a foreign port¹⁵ cannot produce to an authorised officer of the local authority¹⁶ for the district¹⁷ in which the ship arrives¹⁸ or for any district at which the ship calls a valid ship sanitation certificate in respect of the ship (i) if the ship is within the area of an authorised port, an authorised officer may inspect the ship for evidence of danger to public health or infection with a view to issuing a ship sanitation certificate¹⁹; and (ii) if the ship is not within such an area, an authorised officer must consult with a customs officer²⁰, and direct the ship to proceed at the risk of the master of the ship to an area of an authorised port convenient to the ship and the customs officer²¹.

An authorised officer must issue or cause to be issued a ship sanitation control exemption certificate if, after he has inspected a ship under head (i) above, the authorised officer is satisfied that the ship is exempt from control measures²².

If, after a ship has been inspected by an authorised officer, the authorised officer is not satisfied that the ship is exempt from control measures he must (A) if the ship is within the area of an authorised port carry out or require to be carried out under the supervision of an authorised officer control measures necessary for the control of danger to public health or the spread of infection²³, or otherwise take or cause to be taken any steps which he considers necessary to satisfy himself that the ship does not present a danger to public health and is free of infection²⁴; (B) if the ship is not within the area of an authorised port consult with a customs officer²⁵, direct the ship to proceed at the risk of the master of the ship to an area of an authorised port convenient to the ship and the customs officer²⁶, at the time of the ship's departure for the authorised port²⁷, inform an authorised officer of the authorised port of the

evidence found²⁸ and the control measures required²⁹, and note or cause to be noted in any ship sanitation certificate the matters described above³⁰.

If the master produces a ship sanitation certificate but the authorised officer has evidence of danger to public health or infection, notwithstanding such certificate the authorised officer must (aa) either carry out or require to be carried out under the supervision of an authorised officer control measures necessary for the control of danger to public health or the spread of infection³¹, or otherwise take or cause to be taken any steps which he considers necessary to satisfy himself that the ship does not present a danger to public health and is free of infection³²; (bb) if the ship is not within the area of an authorised port consult with a customs officer³³, direct the ship to proceed at the risk of the master of the ship to an area of an authorised port convenient to the ship and the customs officer³⁴, at the time of the ship's departure for the authorised port³⁵, inform an authorised officer of the authorised port of the evidence found³⁶ and the control measures required³⁷, and note or cause to be noted in the ship sanitation certificate the matters described above³⁸.

An authorised officer may extend the period of validity of a ship sanitation certificate by one month if any inspection or control measures required cannot be carried out at the port³⁹, there is no evidence of danger to public health or infection⁴⁰, and the port is authorised to extend the validity of a ship sanitation certificate⁴¹.

The master of a ship must immediately make arrangements to carry out any control measures required by an authorised officer under head (A) or (aa) above⁴². When control measures referred to in those heads have been completed to the satisfaction of an authorised officer the authorised officer must issue or cause to be issued a ship sanitation control certificate⁴³, and note or cause to be noted on the certificate the evidence found and the control measures taken⁴⁴.

A ship sanitation control exemption certificate or ship sanitation control certificate must conform to the relevant model⁴⁵. A ship sanitation certificate⁴⁶ is valid for six months beginning with the date of issue⁴⁷. The local authority must retain a copy of any ship sanitation certificate issued by it for a period of one year beginning with the date of issue⁴⁸.

1 As to the meaning of 'owner' see PARA 889 note 5.

2 As to the meaning of 'ship' see PARA 933 note 14.

3 As to the meaning of 'master' see PARA 934 note 1.

4 'Ship sanitation certificate' means a ship sanitation control certificate or a ship sanitation control exemption certificate; 'ship sanitation control certificate' means a certificate that conforms to the model in the International Health Regulations (2005) of the World Health Organisation ('WHO') adopted by the fifty-eighth World Health Assembly on 23rd May 2005 ('IHR') Annex 3 reproduced in the Public Health (Ships) Regulations 1979, SI 1979/1435, Sch 3 (added by SI 2007/1446; and SI 2007/1901) that is issued in accordance with IHR art 39 (ship sanitation certificates); and 'ship sanitation control exemption certificate' means a certificate that conforms to the model in IHR Annex 3 reproduced in the Public Health (Ships) Regulations 1979, SI 1979/1435, Sch 3 that is issued in accordance with IHR art 39: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1) (definitions added by SI 2007/1447; and SI 2007/1901). The 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

5 'Authorised port' means a port authorised to offer (1) the issuance of a ship sanitation control certificate and the provision of the services referred to (a) in IHR Annex 1; and (b) the form reproduced in the Public Health (Ships) Regulations 1979, SI 1979/1435, Sch 3 (added by SI 2007/1447; and SI 2007/1901); (2) the issuance of a ship sanitation control exemption certificate following inspection of the ship including a thorough inspection of the hold; or (3) the extension of a ship sanitation certificate for a period of one month: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1) (definition added by SI 2007/1447; and SI 2007/1901).

6 As to the meaning of 'authorised officer' see PARA 934 note 6.

7 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18A(1)(a)(i) (regs 18A-18D added by SI 2007/1446; and SI 2007/1901).

8 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18A(1)(a)(ii)(aa) (as added: see note 7).

An authorised officer must ensure that a control measure he requires under reg 18A(1)(a)(ii) or 18B(3)(a) or (4) (a) consists of methods or materials advised by WHO for these procedures, unless the authorised officer determines that other measures are as safe and reliable: reg 18C(1) (as so added). An authorised officer under reg 18A(1)(a)(ii) or 18B(3)(a) or (4)(a) may require additional health measures to be applied for preventing danger to public health or the spread of infection in accordance with IHR art 43, including isolation of the ship at a mooring station or otherwise: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18C(2) (as so added). The local authority must report the application of any such additional health measures required under the National IHR Focal Point para (2): Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18C(3) (as so added). An authorised officer of a port where control measures are applied must note or cause to be noted on the ship sanitation certificate in relation to any case where he is of the view that the conditions under which the measures were carried out were such that a satisfactory result could not be obtained that the case was such a case: reg 18C(4) (as so added). 'Isolation', when applied to a person or group of persons, means the separation of that person or group of persons from other persons, except the health staff on duty, in such a manner as to prevent the spreading of infection: reg 2(1). 'National IHR Focal Point' means the body designated by the United Kingdom for communications with the WHO IHR Contact Point under the IHR; and 'WHO IHR Contact Point' means the unit within WHO accessible for communications with the National IHR Focal Point: reg 2(1) (definitions added by SI 2007/1447; and SI 2007/1901).

9 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18A(1)(a)(ii)(bb) (as added: see note 7). See note 8.

10 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18A(1)(b)(i) (as added: see note 7). 'Customs officer' means an officer of Her Majesty's Revenue and Customs: reg 2(1) (definition substituted by SI 2007/1447; and SI 2007/1900). As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

11 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18A(1)(b)(ii) (as added: see note 7).

12 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18A(2)(a) (as added: see note 7). There is a proviso that he has complied with reg 18A(3). An authorised officer must wherever possible issue or cause to be issued a ship sanitation control exemption certificate only if the inspection of the ship was carried out when the ship and holds (1) were empty; or (2) contained only ballast or other material of such a nature or so disposed as to make a thorough inspection of the holds possible: reg 18A(3) (as so added).

13 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18A(2)(b)(i) (as added: see note 7).

14 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18A(2)(b)(ii) (as added: see note 7).

15 As to the meaning of 'foreign port' see PARA 934 note 3.

16 As to the meaning of 'local authority' see PARA 937.

17 As to the meaning of 'district' see PARA 934 note 4.

18 As to the meaning of 'arrive' see PARA 934 note 3.

19 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(1)(a) (as added: see note 7).

20 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(1)(b)(i) (as added: see note 7).

21 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(1)(b)(ii) (as added: see note 7).

22 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(2) (as added: see note 7). There is a proviso that he has complied with reg 18A(3): see note 12.

23 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(3)(a)(i) (as added: see note 7).

24 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(3)(a)(ii) (as added: see note 7).

25 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(3)(b)(i) (as added: see note 7). See note 8.

26 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(3)(b)(ii) (as added: see note 7). See note 8.

27 If the authorised port is that referred to in the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(3)(b)(ii): see the text and note 26.

- 28 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(3)(b)(iii)(aa) (as added: see note 7).
- 29 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(3)(b)(iii)(bb) (as added: see note 7).
- 30 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(3)(b)(iv) (as added: see note 7). The reference is to the matters described in reg 18B(3)(b)(iii): see the text and notes 27-29.
- 31 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(4)(a)(i) (as added: see note 7). See note 8.
- 32 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(4)(a)(ii) (as added: see note 7). See note 8.
- 33 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(4)(b)(i) (as added: see note 7).
- 34 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(4)(b)(ii) (as added: see note 7).
- 35 Ie the authorised port referred to in the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(4)(b)(ii): see the text and note 34.
- 36 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(4)(b)(iii)(aa) (as added: see note 7).
- 37 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(4)(b)(iii)(bb) (as added: see note 7).
- 38 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(4)(b)(iv) (as added: see note 7). The reference is to the matters described in reg 18B(4)(b)(iii): see the text and notes 35-37.
- 39 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(5)(a) (as added: see note 7).
- 40 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(5)(b) (as added: see note 7).
- 41 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(5)(c) (as added: see note 7).
- 42 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(6) (as added: see note 7). The reference is to reg 18B(3)(a) or (4)(a).
- 43 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(7)(a) (as added: see note 7).
- 44 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18B(7)(b) (as added: see note 7).
- 45 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18D(1) (as added: see note 7). The reference is to IHR Annex 3 which is reproduced in the Public Health (Ships) Regulations 1979, SI 1979/1435, Sch 3 (added by SI 2007/1447; and SI 2007/1901).
- 46 Ie issued under the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18A or reg 18B.
- 47 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18D(2) (as added: see note 7).
- 48 Public Health (Ships) Regulations 1979, SI 1979/1435, reg 18D(3) (as added: see note 7).

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945. Deratting and disinfection of aircraft.

The commander¹ of an aircraft which is at an aerodrome² or a member of the crew³ deputed to act for him, or in the absence of the crew the person in charge of the aircraft, must inform the authorised officer⁴ of the presence or suspected presence of rodents on the aircraft⁵. Where their presence is suspected, or where an aircraft is infected because a plague-infected rodent is found on board on arrival, the authorised officer may require the aircraft to be deratted⁶. Where it has been deratted the commander, crew member or person in charge must inform the authorised officer of the arrangements made for the disposal of the rodents⁷.

The authorised officer may require an aircraft and such of its contents as he specifies to be disinfected where the aircraft is infected because an animal⁸ infected with any of certain diseases⁹ is found on board on arrival¹⁰.

1 As to the meaning of 'commander' see PARA 933 note 23.

2 As to the meaning of 'aerodrome' see PARA 934 note 8.

3 As to the meaning of 'crew' see PARA 941 note 12.

4 As to the meaning of 'authorised officer' see PARA 933 note 26.

5 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 13(3). An authorised officer must ensure that a measure he requires under reg 13(1), (2) consists of methods or materials advised by the World Health Organisation, unless the authorised officer determines that other measures are as safe and reliable: reg 13(3A) (reg 13(3A)-(3C) added by SI 2007/1447; and SI 2007/1900). An authorised officer may require additional health measures to be applied for preventing danger to public health or the spread of infection, including isolation of the aircraft: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 13(3B) (as so added). The responsible authority must report the application of any such additional health measures to the appropriate designated body: reg 13(3C) (as so added). The 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

6 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 13(1) (amended by SI 2007/1447; and SI 2007/1900).

7 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 13(4).

8 As to the meaning of 'animal' see PARA 941 note 9.

9 I.e. plague, Lassa fever, viral haemorrhagic fever or Marburg disease.

10 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 13(2) (amended by SI 2007/1447; and SI 2007/1900).

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946. Examination and surveillance of persons.

The medical officer¹ may, and if so requested by the master² or commander³ or required by the Secretary of State⁴ must, examine any person on board a ship⁵ on arrival⁶ or already in the district⁷, or on board or leaving⁸ an aircraft⁹ when there are reasonable grounds for suspecting that the person is suffering from an infectious disease¹⁰, or has been exposed to infection from such a disease or is verminous¹¹. The authorised officer¹² may: (1) detain any such person for that examination¹³; (2) require the clothing and other articles belonging to any person so examined to be disinfected and, where necessary, disinfected¹⁴ and any person found to be verminous to be disinfected¹⁵; (3) prohibit any person so examined from leaving the ship, or from leaving the aircraft or airport, or permit him to leave only on conditions and subject to the taking of measures¹⁶ for preventing the spread of infection¹⁷; (4) require the master or commander to take, or assist in taking, steps¹⁸ for preventing the spread of infection, for disinsection and the destruction of vermin and for the removal of conditions likely to convey infection, including conditions the existence of which might facilitate the harbouring of insects or vermin¹⁹.

On the arrival of a ship or aircraft, the medical officer may place under surveillance²⁰ a person disembarking from it who has come from an area infected with cholera, smallpox or viral haemorrhagic fever²¹, any suspect²² disembarking from it who has come from an area infected with yellow fever, plague, Lassa fever, viral haemorrhagic fever or Marburg disease²³; and where the additional measures apply²⁴ he may in particular cases place a person under surveillance, or require him to be disinfected or isolated²⁵. Moreover, where a person on board a ship, or intending to leave an aircraft, is suffering, or the medical officer suspects that he is suffering, from an infectious disease, the medical officer may cause him to be isolated or sent to a hospital or some other suitable place approved for that purpose by the appropriate authority²⁶; or he may prohibit him from leaving the ship or aircraft without his written consent²⁷. The medical officer must, however, if he is so required by the master or commander, cause any infected person²⁸ or any person suffering from tuberculosis to be removed from the ship or aircraft²⁹.

Every person under surveillance must: (a) give facilities for any medical examination required by the medical officer or by the medical officer for any area in which he may be during the period of surveillance; (b) furnish all information which the officer may reasonably require with a view to ascertaining the person's state of health; (c) forthwith upon arrival during the surveillance period at any address other than his stated intended destination send particulars to the medical officer; and (d) if so instructed by the medical officer³⁰, report immediately to the medical officer for any area in which he may be during that period, and thereafter during that period to him at such intervals as he may require³¹.

The authorised officer at a customs airport must inform the customs officer³² of any measure applied by him or at his direction under the regulations to any person on an aircraft³³.

1 As to the meaning of 'medical officer' see PARAS 933 note 20, 934 note 6.

2 As to the meaning of 'master' see PARA 934 note 1.

3 As to the meaning of 'commander' see PARA 933 note 23.

4 The medical officer must immediately notify the local authority (see PARA 937) or the responsible authority (see PARA 937 note 1) of any directions given to him by the Secretary of State: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 8(6); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 9(7) (substituted by SI 2007/1446; and SI 2007/1901). In the case of aircraft it can also be the customs officer or other authorised officer. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. The two sets of 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

5 As to the meaning of 'ship' see PARA 933 note 14.

6 As to the meaning of 'arrival' see PARA 934 note 3.

7 As to the meaning of 'district' see PARA 934 note 4.

8 Any reference, however expressed, in the Public Health (Aircraft) Regulations 1979, SI 1979/1434, to a person leaving an aircraft must not be construed as a reference to that person leaving an aircraft and continuing his journey in that aircraft: reg 2(3).

9 The powers under the Public Health (Aircraft) Regulations 1979, SI 1979/1434, regs 8, 9, 20, 21 are expressed to apply to aircraft at a customs airport; and they apply with modifications elsewhere (see reg 25(1) (c); and PARA 947). As to the meaning of 'customs airport' see PARA 938 note 7. The powers do not apply to any aircraft which has not been outside the excepted area unless necessary because of danger to public health: see reg 26; and PARA 933. As to the meaning of 'excepted area' see PARA 933 note 18.

10 As to the meaning of 'infectious disease' see PARA 940 note 6.

11 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 8(1); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 9(1).

12 As to the meaning of 'authorised officer' see PARAS 933 note 26, 934 note 6.

13 A person on board a ship must be detained upon the ship or at some place on shore appointed for the purpose: Public Health (Ships) Regulations 1979, SI 1979/1435, reg 9(2)(a). A person on board or leaving an aircraft must be detained at a place appointed for the purpose: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 8(2)(a).

14 As to the meaning of 'disinsect' see PARA 943 note 14.

15 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 8(2)(b); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 9(2)(b).

16 In such measures as the authorised officer (in the case of ships) or the medical officer (in the case of aircraft) considers reasonably necessary.

17 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 8(2)(c) (amended by SI 2007/1447; and SI 2007/1900); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 9(2)(c). In the case of aircraft the reference is to spread of infection or other danger to public health. These provisions are expressed to be subject to the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 21 or the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 31, as the case may be: see the text and note 29.

18 In such steps as in the opinion of the authorised officer (in the case of ships) or the medical officer (in the case of aircraft) are reasonably necessary.

19 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 8(2)(d) (amended by SI 2007/1447; and SI 2007/1900); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 9(2)(d). In the case of aircraft the reference is to spread of infection or other danger to public health or convey infection or other danger to public health.

20 The period of surveillance varies according to the particular disease: see the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 30 (amended by SI 2007/1447; and SI 2007/1900); and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 36 (amended by SI 2007/1446; and SI 2007/1901).

21 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 20(a) (substituted by SI 2007/1447; and SI 2007/1900); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 30(a) (substituted by SI 2007/1446; and SI 2007/1901).

22 As to the meaning of 'suspect' see PARA 943 note 11.

23 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 20(b); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 30(b).

24 As to such measures and the circumstances in which they apply see PARA 943.

25 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 23, Sch 2 (amended by SI 2007/1447; and SI 2007/1900); and the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 32, Sch 4 (amended by SI 2007/1446; and SI 2007/1901).

26 Is the local authority in the case of ships, or the responsible authority in the case of aircraft.

27 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 9(a); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 10(1)(a) (substituted by SI 2007/1446; and SI 2007/1901). In the case of ships and a person suspected from suffering from an infectious disease, in particular in the case of cholera, smallpox or viral haemorrhagic fever, the medical officer may place such a person under surveillance for the appropriate period specified: see the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 10(1)(a) (as so substituted). Where in like circumstances a person is suffering, or is suspected to be suffering, from tuberculosis, and disembarks or leaves the aircraft, the medical officer may send information to the medical officer for the area of the person's intended destination: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 9(b); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 10(1)(b).

28 As to the meaning of 'infected person' see PARA 943 note 10.

29 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 21 (amended by SI 2007/1447; and SI 2007/1900); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 31. In the case of aircraft he must cause the removal of any infected person or any person suffering from tuberculosis.

30 The instruction must not be given unless the Secretary of State has by direction, whether general or special, authorised it: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 31 proviso; Public Health (Ships) Regulations 1979, SI 1979/1435, reg 37 proviso.

31 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 31(a)-(d); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 37(a)-(d).

32 As to the meaning of 'customs officer' see PARA 933 note 25.

33 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 10.

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947. Aircraft alighting elsewhere than at customs airport.

Where an aircraft alights elsewhere than at a customs airport¹: (1) the commander² must forthwith give notice to that effect to the responsible authority³, or a customs officer⁴, or an immigration⁵ or police officer, and if at an aerodrome⁶ to the person in charge of it⁷; (2) except to give such notice, no person carried by the aircraft may leave its vicinity unless authorised to do so by the authorised officer⁸, and any person so authorised must inform that officer of his name and his intended destination and address⁹; and (3) the regulations apply, with any necessary modification, as if the aircraft had alighted at a customs airport, except in so far as a police officer or a customs officer may require the aircraft, persons on it, and stores, equipment or cargo, to proceed or be taken to a customs airport¹⁰. Where an aircraft has not been outside the excepted area¹¹, these provisions only bind persons who have been notified by the medical officer that they apply because of danger to public health¹².

1 As to the meaning of 'customs airport' see PARA 938 note 7.

2 As to the meaning of 'commander' see PARA 933 note 23.

3 As to the meaning of 'responsible authority' see PARA 937 note 1.

4 As to the meaning of 'customs officer' see PARA 933 note 25.

5 As to the meaning of 'immigration officer' see PARA 939 note 5.

6 As to the meaning of 'aerodrome' see PARA 934 note 8.

7 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 25(1)(a). The 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

8 As to the meaning of 'authorised officer' see PARA 933 note 26.

9 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 25(1)(b). This provision is expressed not to dispense with any consent necessary under any other enactment. Any change of address within 14 days must be notified to the medical officer of the responsible authority for the place where the person left the aircraft: reg 25(2). As to the meaning of 'medical officer' see PARA 933 note 6.

10 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 25(1)(c) (substituted by SI 2007/1447; and SI 2007/1900). There is also provision in the event of conflict between the Public Health (Aircraft) Regulations 1979, SI 1979/1434, in general and reg 25(1)(a) or (b), the latter prevailing.

11 As to the meaning of 'excepted area' see PARA 933 note 18.

12 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 26(a), (b); and PARA 933.

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(iv) Outgoing Ships and Aircraft

948. Examination of persons.

Where a ship¹ is due to depart for a destination, whether final or intermediate, outside the United Kingdom², or an aircraft is due to depart from an aerodrome³ for such a destination, the medical officer⁴ may examine any person who proposes to embark on it if he has reasonable ground for believing him to be suffering from plague, cholera, yellow fever or smallpox⁵; and if after examination the medical officer is of the opinion that the person shows symptoms of such a disease, he must prohibit his embarkation⁶. Furthermore, the medical officer must prohibit any suspect⁷ from embarking except where he is satisfied that a smallpox suspect is sufficiently protected by vaccination or by a previous attack of smallpox⁸; and he must notify by the most expeditious means the master⁹ or commander¹⁰, and the competent authority¹¹ for the place to which the person is proceeding, of any person embarking or proposing to continue his voyage who, in the opinion of the medical officer, should be placed under surveillance¹².

1 As to the meaning of 'ship' see PARA 933 note 14.

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 As to the meaning of 'aerodrome' see PARA 934 note 8.

4 As to the meaning of 'medical officer' see PARAS 933 note 20, 934 note 6.

5 In the case of ships also viral haemorrhagic fever.

6 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 27(a) (amended by SI 2007/1447; and SI 2007/1900); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 33(a) (substituted by SI 2007/1446; and SI 2007/1901). The time and place of the examination must be arranged to take into account any other formalities and to avoid delay: Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 27(a) (as so amended); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 33(a) (as so substituted). The two sets of 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

7 As to the meaning of 'suspect' see PARA 943 note 11.

8 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 27(b); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 33(b). Notwithstanding this provision a person on an international voyage who on arrival was placed under surveillance may be allowed to continue his voyage; and the medical officer must notify the competent authority as under the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 27(d) or the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 33(d) (see the text and notes 9-12); Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 27(c) (amended by SI 2007/1447; and SI 2007/1900); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 33(c) (amended by SI 2007/1446; and SI 2007/1901).

9 As to the meaning of 'master' see PARA 934 note 1.

10 As to the meaning of 'commander' see PARA 933 note 23.

11 'Competent authority' means competent authority identified in accordance with International Health Regulations (2005) of the World Health Organisation ('WHO') adopted by the fifty-eighth World Health Assembly on 23rd May 2005 ('IHR') art 19 (general obligations) and with a role as described in IHR art 22 (role of competent authorities): Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1) (definition added by SI 2007/1447; and SI 2007/1900); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 2(1) (definition added by SI 2007/1446; and SI 2007/1901).

12 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 27(d); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 33(d). As to surveillance see PARA 946.

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949. Infected places.

Where the Secretary of State¹ has by notice² declared any place to be infected with a disease which in his opinion constitutes a menace to other countries by reason of its spread or potential spread, then, until the notice is revoked, every medical officer³ must comply with any requirement which may be made by the Secretary of State for preventing the spread of the disease⁴. In particular, the following provisions operate in relation to any ship⁵ departing from any district⁶ specified by the Secretary of State for a destination, whether final or intermediate, outside the United Kingdom⁷ or to any aircraft departing from any aerodrome⁸ so specified for such a destination:

- 2185 (1) an authorised officer⁹, if so required by the Secretary of State, must require a valid vaccination certificate¹⁰ from departing travellers¹¹;
- 2186 (2) the medical officer may, and within three hours after receiving a request from the master¹² or commander¹³ so to do must, medically examine any person who proposes to embark on or is on board the ship or aircraft¹⁴;
- 2187 (3) the authorised officer may require any part of the ship or aircraft which in his opinion may be infected to be cleansed and disinfected to his satisfaction¹⁵;
- 2188 (4) an authorised officer must inspect any clothing, bedding or other article which is on, or is intended to be taken by any person on, the ship or aircraft and which in the officer's opinion may have been exposed to infection, and may require the disinfection or destruction of any such clothing, bedding or article, and the master or commander must disclose to the authorised officer any relevant circumstances¹⁶;
- 2189 (5) no person may take or cause to be taken on board the ship or aircraft any article which, in the opinion of an authorised officer, is capable of carrying infection unless that officer is satisfied that it has been efficiently disinfected and, where necessary, disinfected¹⁷;
- 2190 (6) if any part of a district is included in the notice or if the aerodrome is situated in an area included in the notice, and is declared in it to be infected with plague, and if there is reason to believe that there are rodents on the ship or aircraft, the authorised officer may, and if so required by the Secretary of State must, take steps to secure the deratting of the ship¹⁸.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 Ie by notice published in the London Gazette.

3 As to the meaning of 'medical officer' see PARAS 933 note 20, 934 note 6.

4 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 28 (amended by SI 2007/1447; and SI 2007/1900); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 34 (amended by SI 2007/1446; and SI 2007/1901). The two sets of 1979 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885.

5 As to the meaning of 'ship' see PARA 933 note 14.

6 As to the meaning of 'district' in relation to ships see PARA 934 note 4.

- 7 As to the meaning of 'United Kingdom' see PARA 1 note 2.
- 8 As to the meaning of 'aerodrome' see PARA 934 note 8.
- 9 As to the meaning of 'authorised officer' see PARAS 933 note 26, 934 note 6.
- 10 In the absence of such a certificate the medical officer may offer vaccination to any such traveller and may apply the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 27(c) or the Public Health (Ships) Regulations 1979, SI 1979/1435, reg 33(c) (see PARA 948 note 8): Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 28(a); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 34(a).
- 11 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 28(a); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 34(a).
- 12 As to the meaning of 'master' see PARA 934 note 1.
- 13 As to the meaning of 'commander' see PARA 933 note 23.
- 14 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 28(b); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 34(b).
- 15 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 28(c); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 34(c).
- 16 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 28(d); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 34(d).
- 17 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 28(e); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 34(e). As to the meaning of 'disinsected' see PARA 943 note 14.
- 18 Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 28(f); Public Health (Ships) Regulations 1979, SI 1979/1435, reg 34(f).

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(6) PRECAUTIONS IN RELATION TO INTERNATIONAL TRAINS

(i) Regulations

950. Making of regulations.

The power of the Secretary of State¹ to make regulations² is modified³ in relation to frontier controls between the United Kingdom⁴ and France so as to include the power to make regulations: (1) for preventing danger to public health from through trains or shuttle trains⁵ whose journey terminates in the United Kingdom⁶; and (2) for preventing the spread of infection by means of any through train or shuttle train whose journey begins in the United Kingdom, so far as may be necessary or expedient for the purpose of carrying out any treaty, convention, arrangement or engagement with any other country⁷.

The regulations may provide for the Secretary of State from time to time: (a) to give written notice to persons operating international services designating all or any through trains as control areas while they are within any area in the United Kingdom specified in the notice or while they constitute a control zone⁸; and (b) to give written notice designating a control area to the concessionaires⁹ as respects any part of the tunnel system¹⁰ in the United Kingdom or of a control zone within the tunnel system in France, or to any occupier or person concerned with the management of a terminal control point¹¹ in the United Kingdom or of a place in the United Kingdom which is a customs approved area¹² or of a railway station which is an international station for the purposes of the Immigration Act 1971¹³. The regulations may provide that such a notice may specify conditions and restrictions to be observed in a control area, and may require any person to whom such a notice is given to take all reasonable steps to secure that any such conditions or restrictions are observed¹⁴.

The regulations may provide for: (i) the questions to be answered in a control area by train managers¹⁵ of through trains and shuttle trains and other persons on such trains, as to cases of epidemic, endemic or infectious disease in the train; (ii) requiring persons on or alighting from such trains to answer in a control area questions pertaining to their state of health or their contact with infection; (iii) the detention of such trains and of persons on them; (iv) the duties to be performed in cases of such diseases by train managers and other persons on such trains¹⁶. The regulations may also authorise the making of charges and provide for the recovery of such charges and of any charges incurred in disinfection¹⁷.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the power to make regulations see PARA 885. The regulations must specify the authorities by whom they are to be enforced and executed, and may specify the Secretary of State as an authority, or as the sole authority, by whom they are to be enforced and executed: see the Public Health (Control of Disease) Act 1984 s 13(4) (prospectively repealed) (see PARA 885); and modified by SI 1993/1813). See also PARA 885. There is a power to enter any premises and any through train or shuttle train while it is in or constitutes a control area for the purpose of executing, or superintending the execution of, the regulations: see the Public Health (Control of Disease) Act 1984 s 13(5) (prospectively repealed) (modified by SI 1993/1813). See also PARA 885. As to the penalty for contravention of the regulations see PARA 885.

As to the regulations made see the Public Health (International Trains) Regulations 1994, SI 1994/311; and PARA 951 et seq. The regulations came into force on 8 March 1994: see reg 1.

3 The modified power does not extend to coastal waters: see the Public Health (Control of Disease) Act 1984 s 13(1) (prospectively repealed) (modified by SI 1993/1813).

4 As to the meaning of 'United Kingdom' see PARA 1 note 2.

5 'Through train' means a train, other than a shuttle train, which for the purposes of the Channel Tunnel Act 1987 ss 11, 12 is engaged on an international service: Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 2(1), Sch 1. 'Shuttle train' has the meaning given in the Channel Tunnel Act 1987 s 1(9): Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1. 'International service' has the meaning given in the Channel Tunnel Act 1987 s 13(6): Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1.

6 Public Health (Control of Disease) Act 1984 s 13(1)(b) (prospectively repealed) (modified by SI 1993/1813).

7 Public Health (Control of Disease) Act 1984 s 13(1)(c) (prospectively repealed) (modified by SI 1993/1813). The Secretary of State may by any such regulations apply, with or without modifications, to any disease to which the regulations relate any enactment (including any enactment in the Public Health (Control of Disease) Act 1984) relating to the notification of disease or to notifiable diseases: see s 13(2) (prospectively repealed); and PARA 885. As to the meaning of 'notifiable disease' see PARA 893.

8 'Control zone' means a control zone within the meaning of the international articles: Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1. As to the international articles see art 2(3), Sch 2. As to the supplementary articles see art 2(4), Sch 2A (added by SI 2001/1544; and the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 2(4) amended by SI 2007/2907).

9 'Concessionaires' has the meaning given by the Channel Tunnel Act 1987 s 1(8), read with s 3(3): Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1.

10 'Tunnel system' has the meaning given by the Channel Tunnel Act 1987 s 1(7): Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1.

11 'Terminal control point' means a place which is an authorised terminal control point for international services for the purposes of the Channel Tunnel Act 1987 ss 11, 12: Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1.

12 Ie within the meaning of the Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 939.

13 Public Health (Control of Disease) Act 1984 s 13(2A) (s 13(2A), (2B) added by SI 1993/1813). References in the Public Health (Control of Disease) Act 1984 s 13(2B), (3), (5) to a control area are references to a control area so designated: see s 13(2A) (as so added). As to the Immigration Act 1971 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**.

14 Public Health (Control of Disease) Act 1984 s 13(2B) (as added: see note 13).

15 'Train manager', in relation to a through train or shuttle train, means the person designated as train manager by the person operating the international service on which the train is engaged: Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1.

16 Public Health (Control of Disease) Act 1984 s 13(3) (prospectively repealed) (modified by SI 1993/1813).

17 Public Health (Control of Disease) Act 1984 s 13(3) (prospectively repealed) (as modified: see note 16).

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(ii) Controls in relation to International Trains

951. Control areas.

The Secretary of State¹ may from time to time:

- 2191 (1) give written notice to any train operator² designating all or any through trains³ as control areas while they are within any area in England or Wales specified in the notice or while they constitute a control zone⁴;
- 2192 (2) give written notice to the concessionaires⁵ designating as a control area any part of the tunnel system⁶ in England⁷;
- 2193 (3) give written notice to any occupier or person concerned with the management of (a) a terminal control point⁸ in England or Wales; or (b) a place in England or Wales which is a customs approved area⁹; or (c) an international station¹⁰, designating that terminal control point, place or international station as a control area¹¹.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 'Train operator' means a person operating any international service, except where the service is operated by a joint international undertaking and part of that undertaking is a British undertaking, in which case it means the British undertaking which forms part of that joint international undertaking: Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1). 'International service' has the same meaning as in the Channel Tunnel Act 1987 s 13(6): Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1). The 1994 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885. See also PARA 950.

3 'Through train' means a train, other than a shuttle train, which for the purposes of the Channel Tunnel Act 1987 ss 11, 12 is engaged on an international service: Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1). 'Shuttle train' has the same meaning as in the Channel Tunnel Act 1987 s 1(9): Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1).

4 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 5(a). As to the meaning of 'control zone' see PARA 950 note 8.

5 As to the meaning of 'concessionaires' see PARA 950 note 9.

6 'Tunnel system' has the same meaning as in the Channel Tunnel Act 1987 s 1(7): Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1).

7 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 5(b).

8 As to the meaning of 'terminal control point' see PARA 950 note 11.

9 Ie within the meaning of the Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 939.

10 'International station' means a railway station which is an international station for the purposes of the Immigration Act 1971 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**): Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1) (definition added by SI 1994/1405).

11 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 5(c) (amended by SI 1994/1405).

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952. Enforcement authorities.

'Enforcement authority' means, in relation to any place in England or Wales, the authority (or authorities) by whom the Public Health (International Trains) Regulations 1994¹ are to be enforced and executed at that place². Where an enforcement area³ is wholly or mainly situated in the area of a local authority⁴, the regulations are to be enforced and executed by the local authority in whose area the enforcement area is wholly or mainly situated; or, where it is not possible to determine in which local authority area an enforcement area is wholly or mainly situated, by all the authorities in whose area part of the enforcement area is situated⁵. However, where any functions under the regulations are assigned⁶ to a port health authority⁷ in whose area an enforcement area is wholly or mainly situated, the regulations are to be enforced and executed by that port health authority⁸. For certain purposes, the Secretary of State⁹ is also specified as an enforcement authority¹⁰.

'Enforcement authority' means, in relation to any function to be executed and enforced on board any through train¹¹ in accordance with the power to question persons¹², the Secretary of State¹³.

Any reference in the regulations to any measure to be undertaken by an enforcement authority must be construed as subject to a requirement that, wherever possible, the measure is to be undertaken in such a way so as not to disrupt unavoidably the scheduled frequency of a loaded international service¹⁴ or the intended running time of an unloaded international service¹⁵.

1 In the Public Health (International Trains) Regulations 1994, SI 1994/311. The 1994 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885. See also PARA 950.

2 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1).

3 In the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 10, 'enforcement area' means any place which is designated as a control area in accordance with reg 5 (see PARA 951) or any freight terminal area: reg 10(1). As to the meaning of 'freight terminal area' see PARA 954 note 11.

4 As to the meaning of 'local authority' see PARA 99.

5 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 10(2)(a).

6 In by an order under the Public Health (Control of Disease) Act 1984 s 2 or s 7: see PARAS 102-103.

7 As to port health authorities see PARA 102.

8 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 10(2)(b).

9 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

10 See the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 10(3). The Secretary of State is specified as an enforcement authority by whom reg 7 (see PARA 954) is to be enforced and executed, in so far as it relates to any place which is designated as a control area in accordance with reg 5 (see PARA 951): reg 10(3).

11 As to the meaning of 'through train' see PARA 951 note 3.

12 le in accordance with the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 9: see PARA 956.

13 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1).

14 As to the meaning of 'international service' see PARA 951 note 2.

15 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 3.

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953. Stowaway animals on incoming trains.

Where a member of the crew of any international train¹ whose journey terminates in the United Kingdom² becomes aware during the journey of the presence or suspected presence of any stowaway animal³ on board the train, he must report the details of its presence or suspected presence to the train manager⁴.

A train manager (or if he is not on board, the most senior member of the crew) who is aware of the presence or suspected presence of a stowaway animal on board his train must arrange for a message containing those details to be sent to the enforcement authority⁵ for the next stopping place⁶, unless: (1) he gives any notice of rabies or suspected rabies in respect of that animal⁷; or (2) he has already arranged for those details to be sent to the enforcement authority at another stopping place⁸.

Where:

- 2194 (a) the presence of a stowaway animal which is or was capable of carrying rabies, plague or viral haemorrhagic fever⁹ is or has been identified or suspected on board an international train¹⁰; or
- 2195 (b) an international train is or may be contaminated because a stowaway animal which may be or may have been infected with rabies, plague or viral haemorrhagic fever is or has been found on board¹¹,

the enforcement authority at a stopping place may require that the train, together with such of its contents as the authority may reasonably specify, be deratted, disinfested or decontaminated in such a manner and within such a time as the authority may reasonably determine¹². An enforcement authority may require any or all of these measures¹³ to be undertaken elsewhere at a designated customs approved area¹⁴ or a designated shuttle control area¹⁵, if the enforcement authority for that area (if different) agrees¹⁶.

Where an international train has been deratted, disinfested or decontaminated pursuant to these provisions, the train operator of that train must inform the enforcement authority for each area at which the deratting, disinfestation or decontamination was undertaken of any arrangements made for the disposal of any stowaway animal¹⁷. Where (i) the presence of a stowaway animal which is or was capable of carrying rabies, plague or viral haemorrhagic fever is or has been identified or suspected on board an international train; and (ii) an international train has been deratted, disinfested or decontaminated during a journey in advance of any measures being required by an enforcement authority of a stopping place, then the train manager of that train must arrange for any enforcement authority notified in accordance with these provisions¹⁸ to be informed of any arrangements made for the disposal of the stowaway animal¹⁹.

¹ 'International train' means any shuttle train or through train: Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1). As to the meanings of 'shuttle train' and 'through train' see PARA 951 note 3. The 1994 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885. See also PARA 950.

2 As to the meaning of 'United Kingdom' see PARA 1 note 2.

3 'Stowaway animal' means any animal, whether dead or alive, which is on board an international train, except one which: (1) is lawfully being transported through the tunnel system; or (2) is being imported into Great Britain contrary to any order made, or which has effect as if made, under the Animal Health Act 1981 s 10 (see **ANIMALS** vol 2 (2008) PARA 1081); Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1). 'Animal' means: (a) any mammal except man; and (b) any four-footed beast whether or not a mammal: reg 2(1). As to the meaning of 'tunnel system' see PARA 951 note 6. As to the meaning of 'Great Britain' see PARA 1 note 2.

4 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(1). 'Train manager' means, in relation to a through train or a shuttle train, the person designated as train manager by the person operating the international service on which the train is engaged: reg 2(1). As to the meaning of 'international service' see PARA 951 note 2.

Certain functions under reg 6 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6 are specified for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW**.

Where reference is made in the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6 to a report to be made to a train manager, or a duty to be performed by a train manager, but a train manager is not travelling on board a particular international train, that report must instead be made to, and that duty must instead be performed by, the most senior member of the crew on board that train: reg 4.

5 As to the meaning of 'enforcement authority' see PARA 952.

6 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(2). For the avoidance of doubt, arrangements made in accordance with reg 6(2) may include arrangements whereby a train operator employee who is not on board the train contacts the relevant enforcement authority: reg 6(8). As to the meaning of 'train operator' see PARA 951 note 2.

'Stopping place' means: (1) in relation to a shuttle train which enters the United Kingdom, a designated shuttle control area; (2) in relation to a through train which enters the United Kingdom as part of a passenger service, a designated terminal control point or a designated international station; (3) in relation to a through train which enters the United Kingdom as part of a freight service, a designated customs approved area: reg 2(1) (definition amended by SI 1994/1405).

'Designated shuttle control area' means a part of the tunnel system which has been designated as a control area in accordance with the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 5(b) (see PARA 951): reg 2(1).

'Passenger service' means any international service:

163 (a) which uses rolling stock designed for the carriage of passengers by way of the tunnel system; or

164 (b) which comprises solely of a locomotive which is used by a train operator for moving such rolling stock,

other than a shuttle service: reg 2(1). As to the meaning of 'rolling stock' see PARA 954 note 2. 'Shuttle service' has the same meaning as in the Channel Tunnel Act 1987 s 1(9): Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1).

'Designated terminal control point' means a terminal control point which has been designated as a control area in accordance with reg 5(c)(i) (see PARA 951 head (3)(a)): reg 2(1).

'Designated international station' means an international station which has been designated as a control area in accordance with reg 5(c)(iii) (see PARA 951 head (3)(c)): reg 2(1) (definition added by SI 1994/1405). As to the meaning of 'international station' see PARA 951 note 10.

'Freight service' means any international service other than a shuttle service or a passenger service: Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1).

'Designated customs approved area' means a customs approved area which has been designated as a control area in accordance with reg 5(c)(ii): (see PARA 951): reg 2(1).

7 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(2)(a). The notice referred to in the text is a notice which is required under the Rabies (Control) Order 1974, SI 1974/2212, art 4(1) (see **ANIMALS** vol 2 (2008) PARA 1057): see the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(2)(a).

- 8 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(2)(b).
- 9 As to the meaning of 'viral haemorrhagic fever' see PARA 893 note 5; definition applied by the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1).
- 10 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(3)(a).
- 11 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(3)(b).
- 12 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(3).
- 13 I.e. the measures which may be required under the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(3) (see the text and notes 10-12): see reg 6(4).
- 14 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(4)(a). See note 16.
- 15 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(4)(b). See note 16.
- 16 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(4). The enforcement authority for an area referred to in reg 6(4)(a) (see the text and note 14) or reg 6(4)(b) (see the text and note 15) may require such additional measures to be undertaken to derat, disinfest or decontaminate the train or its contents as in the authority's opinion are necessary: reg 6(5) (amended by SI 1994/1405).
- 17 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(6).
- 18 I.e. notified in accordance with the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(2): see the text and notes 5-8.
- 19 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 6(7) (amended by SI 1994/1405).

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954. Records in relation to rolling stock.

A train operator¹ must compile and maintain records in relation to all rolling stock² which is or has been used by him in an international service³, and those records must contain the following particulars:

- 2196 (1) any reports known to the operator (including any reports known to a train manager⁴ employed by the train operator) of: (a) the presence or suspected presence of any stowaway animal⁵ on board that rolling stock; or (b) any signs of damage to that rolling stock caused or suspected of being caused by a stowaway animal⁶;
- 2197 (2) any measures taken (including measures taken pursuant to another enactment) to derat, disinfest or decontaminate rolling stock as a result of the presence or suspected presence of any stowaway animal, including any arrangements made for the disposal of any stowaway animal⁷.

A train operator must make the records available for inspection by an enforcement authority⁸ at whichever designated customs approved area⁹, designated shuttle control area¹⁰ or freight terminal area¹¹ is the most appropriate such area for carrying out such an inspection¹².

1 As to the meaning of 'train operator' see PARA 951 note 2.

2 'Rolling stock' includes any railway vehicle, but does not include: (1) any vehicle other than a railway vehicle; or (2) any tank, container, pallet, package, fixture or fitting which is not an integral part of a railway vehicle: Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1). The 1994 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885. See also PARA 950.

3 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 7(1). As to the meaning of 'international service' see PARA 951 note 2. The records may be kept by means of a computer: reg 7(2).

4 As to the meaning of 'train manager' see PARA 953 note 4.

5 As to the meaning of 'stowaway animal' see PARA 953 note 3.

6 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 7(1)(a).

7 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 7(1)(b).

8 As to the meaning of 'enforcement authority' see PARA 952.

9 As to the meaning of 'designated customs approved area' see PARA 953 note 6.

10 As to the meaning of 'designated shuttle control area' see PARA 953 note 6.

11 'Freight terminal area' means any place in England or Wales at which a freight service begins or terminates its journey other than a designated customs approved area: Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1). As to the meaning of 'freight service' see PARA 953 note 6.

12 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 7(3).

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955. Sick travellers on incoming trains.

Where the train manager¹ of an international train² whose journey terminates in the United Kingdom³ (or, if he is not on board, the most senior member of the crew) becomes aware during the journey that there is on board a sick traveller⁴, on or before arrival at the next stopping place⁵ he must arrange for the enforcement authority⁶ for that stopping place to be provided:

- 2198 (1) if the sick traveller is still on board the train, with details of the sick traveller's presence and whereabouts⁷;
- 2199 (2) if the sick traveller is no longer on board the train, with details of the circumstances in which: (a) the sick traveller was identified as a sick traveller; and (b) the sick traveller alighted from or was removed from the train⁸,

unless he has already reported those details to the enforcement authority at another stopping place⁹.

The enforcement authority at the stopping place notified in accordance with these provisions may require the disinfection or decontamination, in such a manner and within such a time as the authority may reasonably determine, of: (i) any article on board the train; or (ii) any rolling stock¹⁰, which the enforcement authority considers may be infested or contaminated¹¹. An enforcement authority may require any or all of these measures¹² to be undertaken elsewhere at a designated customs approved area¹³ or a designated shuttle control area¹⁴, if the enforcement authority for that area (if different) agrees¹⁵.

1 As to the meaning of 'train manager' see PARA 953 note 4.

2 As to the meaning of 'international train' see PARA 953 note 1.

3 As to the meaning of 'United Kingdom' see PARA 1 note 2.

4 'Sick traveller' means a person on an international train who has a serious epidemic, endemic or infectious disease, or in relation to whom there are reasonable grounds for suspecting that he has such a disease: Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1). 'Serious epidemic, endemic or infectious disease' does not include venereal disease or infection with human immunodeficiency virus: reg 2(1). The 1994 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885. See also PARA 950.

5 'Next stopping place' means: (1) if the train is part of a passenger service or a shuttle service, the next stopping place at which the train is due to stop; or (2) if the train is part of a freight service, the next stopping place through which the train is due to pass: Public Health (International Trains) Regulations 1994, SI 1994/311, reg 2(1). As to the meaning of 'stopping place' see PARA 953 note 6. As to the meanings of 'passenger service', 'shuttle service' and 'freight service' see PARA 953 note 6.

6 As to the meaning of 'enforcement authority' see PARA 952.

7 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 8(1)(a).

8 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 8(1)(b).

Public Health (International Trains) Regulations 1994, SI 1994/311, reg 8(1). Where reference is made in reg 8 to a report to be made to a train manager, or a duty to be performed by a train manager, but a train manager is

not travelling on board a particular international train, that report must instead be made to, and that duty must instead be performed by, the most senior member of the crew on board that train: reg 4.

For the avoidance of doubt, arrangements made in accordance with reg 8(1) may include arrangements whereby a train operator employee who is not on board the train contacts the relevant enforcement authority: reg 8(5). As to the meaning of 'train operator' see PARA 951 note 2.

10 As to the meaning of 'rolling stock' see PARA 954 note 2.

11 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 8(2).

12 Ie the measures which may be required under the Public Health (International Trains) Regulations 1994, SI 1994/311, reg 8(2) (see the text and notes 10-11): see reg 8(3).

13 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 8(3)(a). As to the meaning of 'designated customs approved area' see PARA 953 note 6. See note 15.

14 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 8(3)(b). As to the meaning of 'designated shuttle control area' see PARA 953 note 6. See note 15.

15 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 8(3). The enforcement authority for an area referred to in reg 8(3)(a) (see the text and note 13) or reg 8(3)(b) (see the text and note 14) may require such additional measures to be undertaken to disinfest or decontaminate the train or its contents as in the authority's opinion are necessary: reg 8(4).

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956. Questioning of persons on board or alighting from trains.

Where there are reasonable grounds for suspecting that there is a significant danger to public health because a person either is believed to be a sick traveller¹ or may have been exposed to infection with a serious epidemic, endemic or infectious disease², an enforcement authority³ may require him while he is on or when he alights from an international train⁴: (1) to answer in a control area questions pertaining to his current state of health or his contact with the possible source of infection⁵; (2) to answer in writing in a control area questions about his name, address and intended destination⁶.

1 As to the meaning of 'sick traveller' see PARA 955 note 4.

2 As to the meaning of 'serious epidemic, endemic or infectious disease' see PARA 955 note 4.

3 As to the meaning of 'enforcement authority' see PARA 952.

4 As to the meaning of 'international train' see PARA 953 note 1.

5 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 9(a). The 1994 Regulations are made under the Public Health (Control of Disease) Act 1984 s 13 (prospectively repealed): see PARA 885. See also PARA 950.

6 Public Health (International Trains) Regulations 1994, SI 1994/311, reg 9(b).

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18. LODGINGS, MOVABLE DWELLINGS AND CANAL BOATS

(1) LODGINGS

957. General powers.

Local housing authorities¹ have powers of regulation in respect of houses in multiple occupation², and may in particular require the execution of works to remedy defects caused by neglect of management³ and to render the premises fit for the number of occupants⁴, and prevent overcrowding⁵.

A local authority⁶ may make byelaws⁷ for securing decent lodging and accommodation for persons engaged temporarily in picking, gathering or lifting hops, fruit, flowers, bulbs, roots or vegetables⁸.

1 As to the meaning of 'local housing authority' see **HOUSING** vol 22 (2006 Reissue) PARA 5.

2 As to the meaning of 'house in multiple occupation' see **HOUSING** vol 22 (2006 Reissue) PARA 609. As to houses in multiple occupation see **HOUSING** vol 22 (2006 Reissue) PARA 608 et seq. As to registration schemes for houses in multiple occupation see **HOUSING** vol 22 (2006 Reissue) PARA 610 et seq.

3 See **HOUSING** vol 22 (2006 Reissue) PARA 653 et seq.

4 See **HOUSING** vol 22 (2006 Reissue) PARA 625 et seq.

5 See **HOUSING** vol 22 (2006 Reissue) PARA 633 et seq.

6 As to the meaning of 'local authority' see PARA 99.

7 As to byelaws generally see **LOCAL GOVERNMENT** vol 69 (2009) (Reissue) PARA 553 et seq.

8 See the Public Health Act 1936 s 270.

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958. Meaning of 'common lodging house'.

'Common lodging house' means a house¹ provided for the purpose of accommodating by night poor persons, not being members of the same family, who resort to it and are allowed to occupy one common room for the purpose of sleeping or eating². If part only of a house is used, that part is a common lodging house³.

1 As to the meaning of 'house' see PARA 1 note 34.

2 Public Health (Control of Disease) Act 1984 s 74(1). This definition is repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 29(1), (7)(b), Sch 15 Pt 3 as from a day to be appointed under s 170. At the date at which this volume states the law no such day had been appointed. See also PARA 884 note 2, and PARAS 959, 964. The definition is exhaustive, and as it makes no reference to the terms of letting or the manner of payment, premises otherwise within the definition are not excluded from it by reason of any special terms in this regard which may be made: *People's Hostels Ltd v Turley* [1939] 1 KB 149, [1938] 4 All ER 72, DC (decided under earlier legislation). Earlier cases determining that payment was an essential ingredient are now irrelevant in view of the present statutory definition. The statutory definition specifically excludes any public assistance institution, but this phrase is now meaningless as a result of the successive changes in the law obliging authorities to provide accommodation for the homeless (see the Housing Act 1996 Pt VII (ss 175-218); and **HOUSING** vol 22 (2006 Reissue) PARA 244 et seq) or for the aged, infirm or those in need of care or attention (see the National Assistance Act 1948 Pt III (ss 21-35); and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1029 et seq). If there is no community of accommodation for either sleeping or eating, the house cannot be a common lodging house: *LCC v Hankins* [1914] 1 KB 490, DC (decided under earlier legislation).

3 See the Public Health (Control of Disease) Act 1984 s 74(1).

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959. Infectious diseases in common lodging houses.

Where a person in a common lodging house¹ is suffering from any infectious disease, the keeper of the lodging house must immediately give notice² of the case to the local authority³ for the district⁴. The local authority must, if possible on the day on which it receives such a notice and in any case within 48 hours after the receipt of the notice, send a copy of the notice to the primary care trust or local health board within whose area the lodging house is situated⁵.

If the proper officer⁶ of the local authority has reasonable grounds for believing that there is in a common lodging house a person who is suffering, or has recently suffered, from a notifiable disease⁷, he may make complaint upon oath to a justice of the peace; and the justice may by warrant authorise the proper officer to enter the lodging house and examine any person found in it with a view to ascertaining whether he is suffering, or has recently suffered, from a notifiable disease⁸.

If a local authority is satisfied that:

- 2200 (1) a person in a common lodging house is suffering from a notifiable disease⁹;
and
- 2201 (2) serious risk of infection is thereby caused to other persons¹⁰; and
- 2202 (3) accommodation is available for him in a suitable hospital¹¹,

the local authority may, with the consent of the primary care trust or local health board in whose area the common lodging house is situated, order that person to be removed to the hospital¹².

A magistrates' court may make an order directing a common lodging house to be closed until it is certified by the proper officer of the local authority for the district to be free from infection where the court is satisfied, on the application of the local authority, that closure is necessary in the interests of public health on account of the existence or recent occurrence of a case of notifiable disease in the lodging house¹³.

1 As to the meaning of 'common lodging house' see PARA 958.

2 As to the notification of infectious diseases generally see PARA 893 et seq.

3 As to the meaning of 'local authority' see PARA 99.

4 Public Health (Control of Disease) Act 1984 s 39(1). A keeper of a common lodging house who fails to comply with s 39(1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale and to a further fine not exceeding £2 for every day on which the offence continues after conviction: s 39(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. Sections 39-42 are repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170. At the date at which this volume states the law no such day had been appointed. See also PARA 884 note 2.

The keeper must ascertain when any case occurs which makes it his duty to give notice under these provisions: *Logsdon v Holland* (1898) 14 TLR 449, DC (decided under earlier legislation).

5 Public Health (Control of Disease) Act 1984 s 39(3) (amended by the Health Authorities Act 1995 Sch 1 para 108; the National Health Service and Health Care Professions Act 2002 Sch 2 Pt 2 para 50(1), (4); and SI

2007/961) (prospectively repealed). See note 4. As to health authorities and local health boards see **HEALTH SERVICES** vol 54 (2008) PARA 75 et seq.

6 As to the proper officer see PARA 889 note 3.

7 As to the meaning of 'notifiable disease' see PARA 893.

8 Public Health (Control of Disease) Act 1984 s 40 (prospectively repealed). See note 4.

9 Public Health (Control of Disease) Act 1984 s 41(1)(a) (prospectively repealed). See note 4.

10 Public Health (Control of Disease) Act 1984 s 41(1)(b) (prospectively repealed). See note 4.

11 Public Health (Control of Disease) Act 1984 s 41(1)(c) (amended by the National Health Service and Community Care Act 1990 s 66, Sch 9 para 26, Sch 10; the Health Authorities Act 1995 Sch 1 para 108; the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 paras 60, 63; SI 2000/90; and SI 2007/961) (prospectively repealed). See note 4. The reference in the text is a reference to a suitable hospital vested in the Secretary of State or, pursuant to arrangements made by a local health board or primary care trust (whether under an NHS contract or otherwise), a suitable hospital vested in an NHS trust, NHS foundation trust, primary care trust, local health board or any other person: see the Public Health (Control of Disease) Act 1984 s 41(1)(c) (as so amended) (prospectively repealed). As to the meanings of 'NHS contract' and 'NHS trust' see PARA 916 note 7. As to NHS foundation trusts see **HEALTH SERVICES** vol 54 (2008) PARA 174 et seq. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

12 Public Health (Control of Disease) Act 1984 s 41(1) (amended by the National Health Service and Community Care Act 1990 Sch 9 para 26, Sch 10; the Health Authorities Act 1995 Sch 1 para 108; SI 2002/2469; and SI 2007/961) (prospectively repealed). See note 4. The officer of the local authority to whom the order is addressed and any officer of the hospital in question may do all acts necessary for giving effect to the order: Public Health (Control of Disease) Act 1984 s 41(2) (prospectively repealed).

13 See the Public Health (Control of Disease) Act 1984 s 42(1) (prospectively repealed). See note 4. Any person who fails to comply with such an order is liable on summary conviction to a fine not exceeding level 1 on the standard scale, and to a further fine not exceeding £2 for each day on which the offence continues after conviction: s 42(2) (prospectively repealed).

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(2) TENTS, VANS AND SHEDS

960. Meaning of 'movable dwelling'.

'Movable dwelling' includes any tent, any van or other conveyance, whether on wheels or not, and any shed or similar structure (other than a structure to which building regulations¹ apply²), being a tent, conveyance or structure which is used either regularly, or at certain seasons only, or intermittently, for human habitation³.

However, the provisions controlling the use of movable dwellings⁴ do not apply:

- 2203 (1) to a movable dwelling which is kept by its owner on land occupied by him⁵ in connection with his dwelling house and is used for habitation only by him or by members of his household⁶;
- 2204 (2) to a movable dwelling which is kept by its owner on agricultural land occupied by him and is used for habitation only at certain seasons and only by persons employed in farming operations on that land⁷;
- 2205 (3) to a movable dwelling while it is not in use for human habitation and is being kept on premises⁸ the occupier of which permits no movable dwellings to be kept there except such as are for the time being not in use for human habitation⁹;
- 2206 (4) to caravans¹⁰.

1 As to building regulations see **BUILDING**.

2 Public Health Act 1936 s 269(8)(i) proviso (amended by the Building Act 1984 Sch 6 para 3).

3 Public Health Act 1936 s 269(8)(i).

4 Ie the Public Health Act 1936 s 269: see PARA 961 et seq.

5 The owner of land which is not let is deemed to be the occupier of that land: Public Health Act 1936 s 269(8)(ii). As to the meaning of 'owner' see PARA 116. As to the meaning of 'land' see PARA 1 note 34.

6 Public Health Act 1936 s 269(5)(i)(a).

7 Public Health Act 1936 s 269(5)(i)(b).

8 As to the meaning of 'premises' see PARA 1 note 34.

9 Public Health Act 1936 s 269(5)(iii).

10 Caravan Sites and Control of Development Act 1960 s 30(1). 'Caravan' means any structure designed or adapted for human habitation, which is capable of being moved from one place to another, whether by being towed or by being transported on a motor vehicle or trailer, and any motor vehicle so designed or adapted, but does not include any railway rolling stock for the time being on rails forming part of a railway system, or any tent: s 29(1). Certain twin-unit caravans are excluded from this definition: see the Caravan Sites Act 1968 s 13(2) (amended by SI 2006/2374; and SI 2007/3163). As to the licensing of caravan sites etc see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1031 et seq.

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961. Licensing of movable dwellings.

For the purpose of regulating the use of certain classes of movable dwellings¹ within its district², a local authority may grant³: (1) licences authorising persons to allow land occupied⁴ by them within the district to be used as sites for movable dwellings⁵; and (2) licences authorising persons to erect or station, and use, such dwellings within the district⁶. Such a licence does not amount to planning permission⁷, which is normally required where land is developed by bringing movable dwellings onto it⁸. Such conditions may be attached to a licence as the local authority thinks fit⁹; but where an application for a licence is made to a local authority, the authority is deemed to have granted it unconditionally unless within four weeks from its receipt the authority gives notice to the applicant stating that his application is refused, or stating the conditions subject to which the licence is granted¹⁰. An applicant who is aggrieved¹¹ by the refusal of a licence or by any condition attached to a licence may appeal to a magistrates' court¹².

1 As to the meaning of 'movable dwelling', and the classes of movable dwelling to which these provisions do not apply, see PARA 960.

2 As to the meaning of 'district' see PARA 101 note 8. The Public Health Act 1936 s 269 does not apply to any district in which on 1 October 1937 (ie the commencement date of the Public Health Act 1936) there was in force a local Act containing provisions enabling the local authority to regulate, by means of byelaws or licences or otherwise, the use of movable dwellings or camping grounds (s 269(9)); but, on the application of the local authority, the Secretary of State may declare s 269 to be in force in its district instead of the local Act provisions (see s 269(9) proviso). As to the meaning of 'local authority' see PARA 99. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 In exercising its discretion whether to grant a licence, the authority must consider the application only from the point of view of matters relating to health and sanitation; it is not concerned with town and country planning matters (*Pilling v Abergele UDC* [1950] 1 KB 636, [1950] 1 All ER 76, DC), or with questions of contract between the owner and the occupier (*Chertsey UDC v Mixnam's Properties Ltd* [1965] AC 735, [1964] 2 All ER 627, HL (a decision on an application under the Caravan Sites and Control of Development Act 1960 s 3)).

4 As to the meaning of 'land' see PARA 1 note 34. As to the meaning of 'occupied' see PARA 960 note 5.

5 Public Health Act 1936 s 269(1)(i). Certain functions under s 269 are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

6 Public Health Act 1936 s 269(1)(ii).

7 *Higham v Havant and Waterloo UDC* [1951] 2 KB 527, [1951] 2 All ER 178n, CA.

8 See the Town and Country Planning Act 1990 ss 57, 58; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 236 et seq. As to the licensing and control of caravan sites see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1031 et seq.

9 See the Public Health Act 1936 s 269(1). In the case of a licence authorising the use of land, conditions may be attached as to the number and classes of movable dwellings which may be kept on the land at the same time, and the space to be kept free between any two such dwellings, with respect to water supply, and for securing sanitary conditions (see s 269(1)(a)); and, in the case of a licence authorising the use of a movable dwelling, conditions may be attached with respect to its use (including the space to be kept free between it and any other such dwelling) and its removal at the end of a specified period, and for securing sanitary conditions (see s 269(1)(b)).

- 10 See the Public Health Act 1936 s 269(4).
- 11 As to persons aggrieved see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 66.
- 12 See the Public Health Act 1936 s 269(4). As to such appeals see PARA 129.

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962. Exemption of camping organisations.

The Secretary of State¹ may grant a certificate of exemption to an organisation which satisfies him that it takes reasonable steps for securing: (1) that camping sites belonging to or provided by it, or used by its members², are properly managed and kept in good sanitary condition³; and (2) that movable dwellings⁴ used by its members are so used as not to give rise to any nuisance⁵. Such a certificate may be withdrawn at any time, but while it is in force it has the effect of a licence⁶: (a) authorising the use as a site for movable dwellings of any camping ground belonging to, provided by or used by members of the organisation⁷; (b) authorising any member of the organisation to erect or station on any site, and use, a movable dwelling⁸.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 For these purposes, 'member', in relation to an organisation, includes a member of any branch or unit of, or formed by, the organisation: Public Health Act 1936 s 269(6).

3 Public Health Act 1936 s 269(6)(a). See PARA 961 note 5.

4 As to the meaning of 'movable dwelling' see PARA 960.

5 Public Health Act 1936 s 269(6)(b). As to exemption from the requirements as to caravan site licences for organisations whose objects include the encouragement or promotion of recreational facilities see the Caravan Sites and Control of Development Act 1960 s 2, Sch 1 para 12; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1036.

6 As to licences see PARA 961.

7 Public Health Act 1936 s 269(6)(i).

8 Public Health Act 1936 s 269(6)(ii).

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963. Offences.

A person may not allow any land occupied¹ by him to be used for camping purposes² on more than 42 consecutive days³ or more than 60 days in any 12 consecutive months, unless either he holds a licence⁴ in respect of the land or each person using the land as a site for a movable dwelling holds a licence⁵ in respect of that dwelling⁶.

Similarly, a person may not keep a movable dwelling on any one site, or on two or more sites in succession, if any one of those sites is within 100 yards of another of them on more than 42 consecutive days⁷, or 60 days in any 12 consecutive months, unless either he holds a licence⁸ in respect of that dwelling or the occupier of each piece of land on which the dwelling is kept holds a licence⁹ in respect of that land¹⁰.

A person who contravenes any of these provisions¹¹, or fails to comply with any condition¹² attached to a licence, is liable to a penalty¹³.

1 As to the meaning of 'land' see PARA 1 note 34. As to the meaning of 'occupied' see PARA 960 note 5.

2 Land which is in the occupation of the same person as, and within 100 yards of, a site on which there is during any part of a day a movable dwelling is regarded as being used for camping purposes on that day: Public Health Act 1936 s 269(2). As to the meaning of 'movable dwelling' see PARA 960. Separate provisions apply to caravan sites: see PARA 960 note 10.

3 For the purpose of reckoning the 42 day period referred to in the Public Health Act 1936 s 269(2), (3), if a movable dwelling is removed from the site on which it stands, but within 48 hours is brought back to the same site or to another site within 100 yards of it, it is deemed not to have been removed or, as the case may be, to have been moved direct from the one site to the other: s 269(8)(iii).

4 Ie a licence under the Public Health Act 1936 s 269(1)(i): see PARA 961.

5 Ie a licence under the Public Health Act 1936 s 269(1)(ii): see PARA 961.

6 Public Health Act 1936 s 269(2). An occupier who has taken all other reasonable steps is not expected to resort to self-help to evict campers: *Test Valley Investments Ltd v Tanner* (1963) 15 P & CR 279, DC (gipsies).

7 See note 3.

8 Ie a licence under the Public Health Act 1936 s 269(1)(ii): see PARA 961.

9 Ie a licence under the Public Health Act 1936 s 269(1)(i): see PARA 961.

10 Public Health Act 1936 s 269(3).

11 Ie any of the provisions of the Public Health Act 1936 s 269.

12 As to conditions see PARA 961.

13 Public Health Act 1936 s 269(7) (amended by virtue of the Criminal Justice Act 1967 Sch 3 Pt I; the Decimal Currency Act 1969 s 10(1); and the Criminal Justice Act 1982 ss 38, 46). The penalty is a fine not exceeding level 1 on the standard scale, and a further fine not exceeding £2 for each day on which the offence continues after conviction: see the Public Health Act 1936 s 269(7) (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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964. Byelaws as to tents, vans, sheds, etc.

A local authority¹ may make byelaws² for promoting cleanliness in, and the habitable condition of, tents, vans, sheds and similar structures used for human habitation, and generally for the prevention of nuisances in connection with them³. A local authority may also make byelaws for preventing the spread of infectious disease by the occupants or users of tents, vans, sheds and similar structures used for human habitation⁴.

A court before which proceedings are brought for contravention of the byelaws may make an order prohibiting the use for human habitation of the tent, van, shed or other structure in question at such places, or within such area, as may be specified in the order⁵.

1 As to the meaning of 'local authority' see PARA 99.

2 As to byelaws generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 553 et seq.

3 Public Health Act 1936 s 268(4) (amended by the Public Health (Control of Disease) Act 1984 Sch 3). As to tents, vans, sheds, etc as statutory nuisances see PARA 965; and **NUISANCE** vol 78 (2010) PARA 156.

4 Public Health (Control of Disease) Act 1984 s 56(2). As to the prevention of disease see PARA 884 et seq. Section 56 is repealed by the Health and Social Care Act 2008 Sch 15 Pt 3 as from a day to be appointed under s 170. At the date at which this volume states the law no such day had been appointed. See also PARA 884 note 2.

5 See the Public Health Act 1936 s 268(5); and the Public Health (Control of Disease) Act 1984 s 56(3). See note 4.

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965. Statutory nuisances.

A tent, van, shed, or similar structure used for human habitation:

- 2207 (1) which is in such a state, or so overcrowded, as to be prejudicial to the health¹ of the inmates²; or
- 2208 (2) the use of which, by reason of the absence of proper sanitary accommodation or otherwise, gives rise, whether on the site or on other land, to a nuisance or to conditions prejudicial to health³,

is a statutory nuisance⁴.

Where such a nuisance as is mentioned in head (2) above is alleged to arise, wholly or in part, from the use for human habitation of any tent, van, shed or similar structure, then, without prejudice to the liability of the occupants or other users, an abatement notice⁵ may be served on, and proceedings may be taken against⁶, the occupier⁷ of the land⁸ on which the tent, van, shed or other structure is erected or stationed⁹. It is a defence for the occupier to prove that he did not authorise the tent, van, shed or other structure to be stationed or erected on the land¹⁰.

A court before which proceedings are brought in respect of a statutory nuisance caused by, or arising in connection with, a tent, van, shed or similar structure used for human habitation may make an order prohibiting the use for human habitation of the tent, van, shed or other structure in question at such places, or within such areas, as may be specified in the order¹¹.

1 As to the meaning of 'prejudicial to health' see **NUISANCE** vol 78 (2010) PARA 158.

2 Public Health Act 1936 s 268(2)(a).

3 Public Health Act 1936 s 268(2)(b).

4 Public Health Act 1936 s 268(2) (amended by the Environmental Protection Act 1990 Sch 15 para 4). See also **NUISANCE** vol 78 (2010) PARA 156. As to statutory nuisances generally see **NUISANCE** vol 78 (2010) PARAS 115, 155 et seq, 199 et seq.

5 As to abatement notices see **NUISANCE** vol 78 (2010) PARA 200.

6 Ie under the Environmental Protection Act 1990 Pt III (ss 79-84): see **NUISANCE** vol 78 (2010) PARA 155 et seq.

7 For the purposes of the Environmental Protection Act 1990 Pt III, 'occupier' in relation to a tent, van, shed or similar structure includes any person for the time being in charge of it: Public Health Act 1936 s 268(2) (as amended: see note 4).

8 As to the meaning of 'land' see PARA 1 note 34.

9 Public Health Act 1936 s 268(3) (amended by the Environmental Protection Act 1990 Sch 15 para 4).

10 Public Health Act 1936 s 268(3) proviso.

11 See the Public Health Act 1936 s 268(5).

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966. Application of legislation to tents, vans, sheds, etc.

Certain provisions¹ apply in relation to tents, vans, sheds and similar structure used for human habitation as they apply in relation to other premises² and as if a tent, van, shed or similar structure used for human habitation were a house³ or a building so used⁴.

1 The provisions of the Public Health Act 1936 Pt II (ss 33-90) relating to filthy or verminous premises or articles and verminous persons (see ss 83-86; and PARA 855 et seq); the provisions of Pt VII (s 205) (see **HEALTH AND SAFETY AT WORK**); the provisions of Pt XII (ss 275-347) (see PARA 114 et seq); the provisions of the Public Health (Control of Disease) Act 1984 Pt II (ss 10-45) (prospectively repealed) (other than ss 39-42) (prospectively repealed) (see PARA 959); the provisions of Pt III (ss 46-48) (see PARA 900); the provisions of Pt V (ss 54-56) (prospectively repealed) (see PARAS 891, 892, 964); the provisions of Pt VI (ss 57-79) (s 57 prospectively repealed) (see PARAS 63, 64, 137 et seq, 887, 974); and the provisions of the Environmental Protection Act 1990 Pt III (ss 79-84) (see **NUISANCE** vol 78 (2010) PARA 155 et seq).

2 As to the meaning of 'premises' see PARA 1 note 34.

3 As to the meaning of 'house' see PARA 1 note 34.

4 Public Health Act 1936 s 268(1) (amended by the Public Health (Control of Disease) Act 1984 Sch 3; and the Environmental Protection Act 1990 Sch 15 para 4); Public Health (Control of Disease) Act 1984 s 56(1). Section 56 is repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 12, Sch 15 Pt 3 as from a day to be appointed under s 170. At the date at which this volume states the law no such day had been appointed. See also PARA 884 note 2.

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(3) CANAL BOATS

967. Canal boats regulations.

It is the duty of the Secretary of State¹ to make regulations²: (1) for fixing the number, age and sex of persons who may be permitted to dwell in canal boats³, regard being had to cubic space, ventilation, provision for the separation of the sexes, general healthiness and convenience of accommodation⁴; (2) for promoting cleanliness in, and ensuring the habitable condition of, canal boats⁵; and (3) for preventing the spread of infectious disease by canal boats⁶.

¹ As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

² The power to make the regulations is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: Public Health (Control of Disease) Act 1984 s 49(2). At the date at which this volume states the law no such regulations had been made under s 49(2) but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Canal Boats Regulations 1878, dated 20 March 1878, have effect as if made under these provisions.

³ 'Canal boat' means any vessel, however propelled, which is used for the conveyance of goods along a canal, not being: (1) a sailing barge which belongs to the class generally known as 'Thames sailing barge' and is registered under the Merchant Shipping Act 1995, either in the Port of London or elsewhere; or (2) a sea-going ship so registered; or (3) a vessel used for pleasure purposes only: Public Health (Control of Disease) Act 1984 s 53 (definition amended by the Merchant Shipping Act 1995 Sch 13 para 69). As to registration under the Merchant Shipping Act 1995 see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 245 et seq. 'Canal' includes any river, inland navigation or lake, and any other waters situated wholly or partly within a county or county borough, whether those waters are or are not within the ebb and flow of the tide: Public Health (Control of Disease) Act 1984 s 53 (definition amended by the Local Government (Wales) Act 1994 Sch 9 para 13).

⁴ Public Health (Control of Disease) Act 1984 s 49(1)(a). The regulations provide among other things for 60 cubic feet of free air space for every person above the age of 12 and 40 cubic feet for every person under that age, or 180 cubic feet for two adults sleeping at the same time where four persons work and sleep in shifts: see the Canal Boats Regulations 1878, dated 20 March 1878, reg 8.

⁵ Public Health (Control of Disease) Act 1984 s 49(1)(b). The regulations: (1) require interior paintwork to be thoroughly renewed every three years (see the Canal Boats Regulations 1878, dated 20 March 1878, reg 9); (2) require at least daily pumping of bilge water (see reg 10); and (3) require cabins to be kept clean and habitable (see reg 11).

⁶ Public Health (Control of Disease) Act 1984 s 49(1)(c). Section 49(1)(c) (and the word 'and' preceding it) are repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 8(b), Sch 15 Pt 3 and at the date at which this volume states the law this repeal is only in force so far as it confers power to make subordinate legislation. See PARA 884 note 2.

The regulations require the master to notify the local authority and the owner of the boat if any person on board is seriously ill or evidently suffering from an infectious disease (see the Canal Boats Regulations 1878, dated 20 March 1878, reg 12) and make provision as to certificates of cleansing and disinfection (see reg 13; and PARA 969 note 7).

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968. Offences against canal boats regulations.

If any regulation¹ is not complied with as respects a canal boat², the master³ of the boat and also the owner⁴, if he is himself in default, are liable on summary conviction to a penalty⁵. Proceedings may be taken before a magistrates' court acting either in the place where the offence was committed or in the place where the alleged offender for the time being is⁶.

1 As to the regulations see PARA 967.

2 As to the meaning of 'canal boat' see PARA 967 note 3.

3 'Master', in relation to a canal boat, means the person having command or charge of the boat: Public Health (Control of Disease) Act 1984 s 53.

4 'Owner', in relation to a canal boat, includes the person who, though only the hirer of the boat, appoints the master and other persons working the boat: Public Health (Control of Disease) Act 1984 s 53.

5 Public Health (Control of Disease) Act 1984 s 49(3). The penalty is a fine not exceeding level 1 on the standard scale, and a further fine not exceeding £2 for each day after conviction on which the non-compliance continues: see s 49(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

6 Public Health (Control of Disease) Act 1984 s 52. Section 52 is repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 11, Sch 15 Pt 3 as from a day to be appointed under s 170. At the date at which this volume states the law no such day had been appointed. See also PARA 884 note 2.

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969. Infectious diseases on canal boats.

A local authority¹ or port health authority², on being informed that any person on a canal boat³ within its district is suffering from an infectious disease, must cause such steps to be taken for preventing the spread of the disease as it considers to be necessary⁴. For that purpose, the authority may exercise any of the powers in relation to the prevention of infection conferred upon it by the Public Health (Control of Disease) Act 1984⁵, including powers for procuring the removal to hospital of persons suffering from an infectious disease⁶, and may also, if need be, detain the boat, but not for any longer period than is necessary for cleansing and disinfecting it⁷.

1 As to the meaning of 'local authority' see PARA 99.

2 As to port health authorities see PARA 102 et seq.

3 As to the meaning of 'canal boat' see PARA 967 note 3.

4 Public Health (Control of Disease) Act 1984 s 51(1). Section 51(1) is repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 10(b), Sch 15 Pt 3 as from a day to be appointed under s 170. At the date at which this volume states the law no such day had been appointed. See also PARA 884 note 2.

5 See PARA 884 et seq.

6 See PARAS 916-917.

7 Public Health (Control of Disease) Act 1984 s 51(1). See note 4. As to cleansing and disinfection generally see PARA 889. Where an authority has detained a canal boat for cleansing and disinfection, it must obtain from its proper officer or a registered medical practitioner a certificate of cleansing and disinfection before allowing the boat to proceed, and it must deliver the certificate to the master: Canal Boats Regulations 1878, dated 20 March 1878, reg 13. As to the proper officer see PARA 889 note 3. As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4. As to the meaning of 'master' see PARA 968 note 3.

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970. Duty of local authorities.

It is the duty of any local authority¹ within whose district any part of a canal² is situated to carry into effect the statutory provisions relating to canal boats³ and the regulations⁴ made under those provisions⁵.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'canal' see PARA 967 note 3.

3 Ie the Public Health (Control of Disease) Act 1984 Pt IV (ss 49-53) (s 52 prospectively repealed). As to the meaning of 'canal boat' see PARA 967 note 3.

4 As to the regulations see PARA 967.

5 See the Public Health (Control of Disease) Act 1984 s 51(2). As from a day to be appointed, the reference to the provisions of Pt IV is removed: s 51(2) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 10(b), Sch 15 Pt 3). At the date at which this volume states the law no such day had been appointed. See also PARA 884 note 2.

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971. Entry and inspection of canal boats.

An inspector appointed by the Secretary of State¹ may enter a canal boat² at any time between 6 am and 9 pm and examine every part of the boat, and may, if need be, detain the boat for the purpose of his examination, but not for any longer period than is necessary³. If an authorised officer⁴ of a local authority⁵ or port health authority⁶ has reasonable ground for believing that any provision of the regulations relating to canal boats⁷ is being contravened as respects a canal boat⁸ or that there is on board a canal boat any person suffering from an infectious disease⁹, he has similar rights of entering, examining and if necessary detaining the boat for the purpose of ascertaining whether there is any such contravention or any person on board suffering from an infectious disease¹⁰. The master¹¹ of a canal boat must, if required by such an inspector or officer, furnish him with such assistance and means as he may require for the purpose of his entry on and departure from the boat and his examination of it¹².

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the meaning of 'canal boat' see PARA 967 note 3.

3 Public Health (Control of Disease) Act 1984 s 50(1). The inspector must produce, if required, evidence of his authority: see s 50(1).

4 As to the meaning of 'authorised officer' see PARA 885 note 12.

5 As to the meaning of 'local authority' see PARA 99.

6 As to port health authorities see PARA 102 et seq.

7 As to the regulations see PARA 967.

8 Public Health (Control of Disease) Act 1984 s 50(2)(a).

9 Public Health (Control of Disease) Act 1984 s 50(2)(b). Section 50(2)(b) is repealed by the Health and Social Care Act 2008 Sch 11 paras 1, 9(a), Sch 15 Pt 3 as from a day to be appointed under s 170. At the date at which this volume states the law no such day had been appointed. See also PARA 884 note 2.

10 Public Health (Control of Disease) Act 1984 s 50(2). As from a day to be appointed, the reference to 'any person on board suffering from an infectious disease' is removed: s 50(2) (prospectively amended by the Health and Social Care Act 2008 Sch 11 paras 1, 9(b), Sch 15 Pt 3). At the date at which this volume states the law no such day had been appointed. See note 9.

11 As to the meaning of 'master' see PARA 968 note 3.

12 Public Health (Control of Disease) Act 1984 s 50(3). Any person who refuses to comply with such a requisition is deemed to have obstructed the person by whom the requisition was made: s 50(4). As to the penalty for obstruction or wilful obstruction see s 63; and PARA 141.

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19. LICENSING AND CLEANLINESS OF CERTAIN PREMISES

(1) IN GENERAL

972. In general.

There are various provisions relating to the cleanliness of premises which are dealt with elsewhere in this work. These include, for example, provisions relating to food hygiene¹; the cleansing and disinfection of places used for animals²; the conduct of residential care homes³; and provisions relating to health and safety at places of work⁴.

1 See generally **FOOD**.

2 See eg **ANIMALS** vol 2 (2008) PARAS 870, 1052.

3 See **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1056.

4 See generally **HEALTH AND SAFETY AT WORK**. As to health and safety at school premises see **EDUCATION** vol 15(1) (2006 Reissue) PARAS 234, 284.

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(2) ACUPUNCTURE, TATTOOING, SEMI-PERMANENT SKIN-COLOURING, COSMETIC PIERCING AND ELECTROLYSIS

973. Application of provisions relating to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.

A local authority¹ may resolve that provisions relating to acupuncture and tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis² are to apply to its area; and if a local authority does so resolve, the provisions specified in the resolution are to come into force in its area on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed)³.

A local authority must publish notice that it has passed such a resolution in two consecutive weeks in a local newspaper circulating in its area⁴. The notice must state which provisions are to come into force in that area⁵.

1 As to the meaning of 'local authority' see PARA 99.

2 I.e. the provisions of the Local Government (Miscellaneous Provisions) Act 1982 ss 14, 16, 17; or the provisions of ss 15, 16, 17; or the provisions of ss 14, 15, 16, 17: see s 13(2), (3). As to these provisions see PARAS 974-977.

3 Local Government (Miscellaneous Provisions) Act 1982 s 13(1), (2). A resolution which provides that s 15 (see PARA 975) is to apply to the area of a local authority need not provide that it is to apply to all the descriptions of persons specified in s 15(1) (see PARA 975); and if such a resolution does not provide that s 15 is to apply to persons of all of those descriptions, the reference in s 13(2) to the coming into force of provisions specified in the resolution is to be construed, in its application to s 15, and to s 16 (see PARA 976) so far as it has effect for the purposes of s 15, as a reference to the coming into force of those provisions only in relation to persons of the description or descriptions specified in the resolution: s 13(4). If a resolution provides for the coming into force of s 15 in relation to persons of more than one of the descriptions specified in s 15(1), the resolution may provide that that provision, and s 16 so far as it has effect for the purposes of that provision, are to come into force on different days in relation to persons of each of the descriptions specified in the resolution: s 13(5).

4 Local Government (Miscellaneous Provisions) Act 1982 s 13(6). The first publication must not be later than 28 days before the day specified in the resolution for the coming into force of the provisions specified in it in the local authority's area: s 13(7).

5 Local Government (Miscellaneous Provisions) Act 1982 s 13(8). The notice must also: (1) if the resolution provides for the coming into force of s 14 (see PARA 974), explain that that provision applies to persons carrying on the practice of acupuncture; and (2) if the resolution provides for the coming into force of s 15 (see PARA 975), specify the descriptions of persons in relation to whom that provision is to come into force: s 13(9).

Any such notice must state the general effect, in relation to persons to whom the provisions specified in the resolution will apply, of the coming into force of those provisions: s 13(10).

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974. Registration and cleanliness in relation to the practice of acupuncture.

A person must not in any area in which these provisions are in force¹ carry on the practice of acupuncture² unless he is registered by the local authority³ for the area under these provisions⁴. A person may only carry on the practice of acupuncture in any area in which these provisions are in force in premises registered by the local authority for the area under these provisions⁵, although a person who is registered does not contravene this provision merely because he sometimes visits people to give them treatment at their request⁶.

On application for registration under these provisions, a local authority must register the applicant and the premises where he desires to practise and must issue to the applicant a certificate of registration⁷. An application for registration must be accompanied by such particulars as the local authority may reasonably require⁸. A local authority may charge such reasonable fees as it may determine for registration under these provisions⁹.

A local authority may make byelaws for the purpose of securing:

- 2209 (1) the cleanliness of registered premises and fittings in such premises¹⁰;
- 2210 (2) the cleanliness of registered persons and persons assisting registered persons in their practice¹¹;
- 2211 (3) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with the practice of acupuncture¹².

1 See PARA 973.

2 Nothing in the Local Government (Miscellaneous Provisions) Act 1982 s 14 extends to the practice of acupuncture by or under the supervision of a person who is registered as a medical practitioner or a dentist or to premises on which the practice of acupuncture is carried on by or under the supervision of such a person: s 14(8). As to registered medical practitioners and dentists see **MEDICAL PROFESSIONS**.

3 As to the meaning of 'local authority' see PARA 99.

4 Local Government (Miscellaneous Provisions) Act 1982 s 14(1).

5 Local Government (Miscellaneous Provisions) Act 1982 s 14(2).

6 Local Government (Miscellaneous Provisions) Act 1982 s 14(2).

7 Local Government (Miscellaneous Provisions) Act 1982 s 14(3). This provision is subject to s 16(8)(b) (see PARA 976): see s 14(3).

8 Local Government (Miscellaneous Provisions) Act 1982 s 14(4). The particulars that the local authority may require include, without prejudice to the generality of s 14(4), particulars as to the premises where the applicant desires to practise and particulars of any conviction of the applicant under s 16 (see PARA 976), but do not include information about individual people to whom the applicant has given treatment: s 14(5).

9 Local Government (Miscellaneous Provisions) Act 1982 s 14(6).

10 Local Government (Miscellaneous Provisions) Act 1982 s 14(7)(a).

11 Local Government (Miscellaneous Provisions) Act 1982 s 14(7)(b).

12 Local Government (Miscellaneous Provisions) Act 1982 s 14(7)(c).

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975. Registration and cleanliness in relation to tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.

A person must not in any area in which these provisions are in force¹ carry on the business of tattooing, of semi-permanent skin-colouring, of cosmetic piercing, or of electrolysis, unless he is registered by the local authority² for the area under these provisions³. A person may only carry on such a business in any area in which these provisions are in force in premises registered under these provisions for the carrying on of that business⁴, although a person who carries on the business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis and is registered as carrying on that business does not contravene this provision merely because he sometimes visits people at their request to tattoo them or, as the case may be, to carry out semi-permanent colouring on them, pierce their bodies or give them electrolysis⁵.

On application for registration under these provisions, a local authority must register the applicant and the premises where he desires to carry on his business and must issue to the applicant a certificate of registration⁶. An application for registration must be accompanied by such particulars as the local authority may reasonably require⁷. A local authority may charge such reasonable fees as it may determine for registration under these provisions⁸.

A local authority may make byelaws for the purposes of securing:

- 2212 (1) the cleanliness of registered premises and fittings in such premises⁹;
- 2213 (2) the cleanliness of registered persons and persons assisting registered persons in the business in respect of which they are registered¹⁰;
- 2214 (3) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with a business in respect of which a person is registered under these provisions¹¹.

1 See PARA 973.

2 As to the meaning of 'local authority' see PARA 99.

3 Local Government (Miscellaneous Provisions) Act 1982 s 15(1) (amended by the Local Government Act 2003 s 120(1), (2)). In the Local Government (Miscellaneous Provisions) Act 1982 s 15, 'semi-permanent skin-colouring' means the insertion of semi-permanent colouring into a person's skin: s 15(9) (added by the Local Government Act 2003 s 120(1), (5)). Nothing in the Local Government (Miscellaneous Provisions) Act 1982 s 15 extends to the carrying on of a business such as is mentioned in s 15(1) by or under the supervision of a person who is registered as a medical practitioner or to premises on which any such business is carried on by or under the supervision of such a person: s 15(8). As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

4 Local Government (Miscellaneous Provisions) Act 1982 s 15(2).

5 Local Government (Miscellaneous Provisions) Act 1982 s 15(2) (amended by the Local Government Act 2003 s 120(1), (3)).

6 Local Government (Miscellaneous Provisions) Act 1982 s 15(3). This provision is subject to s 16(8)(b) (see PARA 976): see s 15(3).

7 Local Government (Miscellaneous Provisions) Act 1982 s 15(4). The particulars that the local authority may require include, without prejudice to the generality of s 15(4), particulars as to the premises where the applicant desires to carry on his business and particulars of any conviction of the applicant under s 16 (see PARA 976), but do not include information about individual people whom the applicant has tattooed or given electrolysis, whose bodies he has pierced or on whom he has carried out semi-permanent skin-colouring: s 15(5) (amended by the Local Government Act 2003 s 120(1), (4)).

8 Local Government (Miscellaneous Provisions) Act 1982 s 15(6).

9 Local Government (Miscellaneous Provisions) Act 1982 s 15(7)(a).

10 Local Government (Miscellaneous Provisions) Act 1982 s 15(7)(b).

11 Local Government (Miscellaneous Provisions) Act 1982 s 15(7)(c).

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976. Offences and penalties in relation to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.

Any person who contravenes the registration requirements in relation to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis¹ is guilty of an offence and liable on summary conviction to a fine².

Any person who contravenes a byelaw made under the provisions relating to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis³ is guilty of an offence and liable on summary conviction to a fine⁴. If a registered person⁵ is found guilty of such an offence, the court, instead of or in addition to imposing a fine, may order the suspension or cancellation of his registration⁶. A court which orders the suspension or cancellation of a person's registration⁷ may also order the suspension or cancellation of any registration⁸ of the premises in which the offence was committed, if the premises are occupied by the person found guilty of the offence⁹.

Where the registration of any person¹⁰ is cancelled by order of the court under these provisions:

2215 (1) he must within seven days deliver up to the local authority¹¹ the cancelled certificate of registration, and, if he fails to do so, he is guilty of an offence and liable on summary conviction to a fine¹²; and

2216 (2) he must not again be registered by the local authority except with the consent of the magistrates' court which convicted him¹³.

A person registered under Part VIII of the Local Government (Miscellaneous Provisions) Act 1982¹⁴ must keep a copy of any certificate of registration issued to him¹⁵ and of any byelaws¹⁶ relating to the practice or business in respect of which he is so registered prominently displayed at the place where he carries on that practice or business¹⁷. A person who contravenes this provision is guilty of an offence and liable on summary conviction to a fine¹⁸.

It is a defence for a person charged with an offence under these provisions¹⁹ to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence²⁰.

Nothing in Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 applies to anything done to an animal²¹.

1 le the Local Government (Miscellaneous Provisions) Act 1982 s 14(1), (2), s 15(1) or (2): see PARAS 974-975.

2 Local Government (Miscellaneous Provisions) Act 1982 s 16(1) (amended by virtue of the Criminal Justice Act 1982 s 46). The penalty is a fine not exceeding level 3 on the standard scale: see the Local Government (Miscellaneous Provisions) Act 1982 s 16(1) (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

3 le under the Local Government (Miscellaneous Provisions) Act 1982 s 14(7) (see PARA 974) or s 15(7) (see PARA 975).

4 Local Government (Miscellaneous Provisions) Act 1982 s 16(2) (amended by virtue of the Criminal Justice Act 1982 s 46). The penalty is a fine not exceeding level 3 on the standard scale: see the Local Government (Miscellaneous Provisions) Act 1982 s 16(2) (as so amended).

5 Ie a person registered under the Local Government (Miscellaneous Provisions) Act 1982 s 14 (see PARA 974) or s 15 (see PARA 975).

6 See the Local Government (Miscellaneous Provisions) Act 1982 s 16(3), (4). A court ordering the suspension or cancellation of registration by virtue of s 16(3) or s 16(4) may suspend the operation of the order until the expiration of the period prescribed by Criminal Procedure Rules for giving notice of appeal to the Crown Court: Local Government (Miscellaneous Provisions) Act 1982 s 16(6) (amended by SI 2004/2035). If notice of appeal is given within the period so prescribed, an order under the Local Government (Miscellaneous Provisions) Act 1982 s 16(3) or s 16(4) is to be suspended until the appeal is finally determined or abandoned: s 16(7). As to Criminal Procedure Rules see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

7 Ie by virtue of the Local Government (Miscellaneous Provisions) Act 1982 s 16(3) or s 16(4) (see the text and note 6).

8 Ie under the Local Government (Miscellaneous Provisions) Act 1982 s 14 (see PARA 974) or, as the case may be, s 15 (see PARA 975).

9 Local Government (Miscellaneous Provisions) Act 1982 s 16(5).

10 Ie under the Local Government (Miscellaneous Provisions) Act 1982 s 14 (see PARA 974) or s 15 (see PARA 975).

11 As to the meaning of 'local authority' see PARA 99.

12 Local Government (Miscellaneous Provisions) Act 1982 s 16(8)(a) (amended by virtue of the Criminal Justice Act 1982 s 46). The penalty is a fine not exceeding level 2 on the standard scale and thereafter a daily fine not exceeding £5: see the Local Government (Miscellaneous Provisions) Act 1982 s 16(8)(a) (as so amended).

13 Local Government (Miscellaneous Provisions) Act 1982 s 16(8)(b).

14 Ie the Local Government (Miscellaneous Provisions) Act 1982 Pt VIII (ss 13-17).

15 Ie under the Local Government (Miscellaneous Provisions) Act 1982 Pt VIII.

16 Ie under the Local Government (Miscellaneous Provisions) Act 1982 Pt VIII.

17 Local Government (Miscellaneous Provisions) Act 1982 s 16(9).

18 Local Government (Miscellaneous Provisions) Act 1982 s 16(10) (amended by virtue of the Criminal Justice Act 1982 s 46). The penalty is a fine not exceeding level 2 on the standard scale: see the Local Government (Miscellaneous Provisions) Act 1982 s 16(10) (as so amended).

19 Ie under the Local Government (Miscellaneous Provisions) Act 1982 s 16(1), (2), (8) or (10).

20 Local Government (Miscellaneous Provisions) Act 1982 s 16(11).

21 Local Government (Miscellaneous Provisions) Act 1982 s 16(12).

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977. Power to enter premises.

An authorised officer of a local authority¹ may enter any premises in the authority's area if he has reason to suspect that an offence² is being committed there³. This power may be exercised by an authorised officer of a local authority only if he has been granted a warrant by a justice of the peace⁴.

Where an authorised officer of a local authority exercises this power, he must produce his authority if required to do so by the occupier of the premises⁵.

Any person who without reasonable excuse refuses to permit an authorised officer of a local authority to exercise this power of entry is guilty of an offence and is for every such refusal liable to a penalty⁶.

1 As to the meaning of 'local authority' see PARA 99.

2 Ie under the Local Government (Miscellaneous Provisions) Act 1982 s 16: see PARA 976.

3 Local Government (Miscellaneous Provisions) Act 1982 s 17(1).

4 Local Government (Miscellaneous Provisions) Act 1982 s 17(2). A justice may grant such a warrant only if he is satisfied: (1) that admission to any premises has been refused, or that refusal is apprehended, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and (2) that there is reasonable ground for entry under these provisions: s 17(3). A warrant may not be granted unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry: s 17(4). A warrant continues in force: (a) for seven days; or (b) until the power conferred by s 17 has been exercised in accordance with the warrant, whichever period is the shorter: s 17(5).

5 Local Government (Miscellaneous Provisions) Act 1982 s 17(6).

6 Local Government (Miscellaneous Provisions) Act 1982 s 17(7) (amended by virtue of the Criminal Justice Act 1982 s 46). The penalty on summary conviction is a fine not exceeding level 3 on the standard scale: see the Local Government (Miscellaneous Provisions) Act 1982 s 17(7) (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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(3) ESTABLISHMENTS FOR SPECIAL TREATMENTS

978. Regulation of establishments for special treatment in London.

An establishment for special treatment means any premises used, intended to be used or represented as being used for the reception or treatment of persons requiring massage; manicure; acupuncture; tattooing; cosmetic piercing; chiropody; light, electric or other special treatment of a like kind; or vapour, sauna or other baths¹.

The law relating to the regulation of establishments for special treatment in London was originally contained in the London County Council (General Powers) Act 1920. This has now been replaced by the London Local Authorities Act 1991, which Act, however, only comes into force as it is adopted by each London borough council by resolution of that council. The body of law which applies is therefore dependent upon the identity of the London borough in which the relevant premises are situated, and it is necessary to ascertain from the relevant council which statutory regime applies within its area².

Part II of the London Local Authorities Act 1991³ applies to a borough from such day as may be fixed in relation to that borough by resolution of the borough council⁴. Subject to certain exceptions⁵, it is not lawful for any premises to be used as an establishment for special treatment in a London borough except under and in accordance with a special treatment licence granted by the borough council⁶. Provision is made as to the procedure for applications, and as to the grant, renewal and transfer of licences⁷. Licences may also be varied⁸, refused, revoked, transmitted or cancelled⁹. There is a right of appeal¹⁰. The borough council has power to make regulations prescribing standard terms, conditions and restrictions applicable to all, or any class of, licences¹¹. Contravention of the licensing requirements in Part II is an offence¹².

Where the relevant provisions of the London Local Authorities Act 1991 are not in force, it is not lawful, subject to certain exceptions¹³, for any person to carry on an establishment for massage or special treatment in Greater London¹⁴ without a licence¹⁵. Provision is made as to the procedure for applications, and the grant, renewal and revocation of licences¹⁶. Provision is also made as to the procedure for appeals¹⁷. There is a power to make byelaws¹⁸. Contravention of the licensing requirements is an offence¹⁹.

See the London County Council (General Powers) Act 1920 s 3; and the London Local Authorities Act 1991 s 4 (as amended: see note 5).

² As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq.

³ I.e. the London Local Authorities Act 1991 Pt II (ss 4-17).

⁴ See the London Local Authorities Act 1991 ss 3(1), 5. Certain procedural requirements must be observed in relation to the publication of the resolution and the date upon which it takes effect: see s 3. As to the application of Pt II to existing special treatment premises see s 16. For the enactments repealed see s 17, Schedule.

⁵ As to the exceptions see the London Local Authorities Act 1991 s 4(a)-(e) (amended by the Charities Act 1993 Sch 6 para 28; the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 paras 91, 92; SI 2000/90; SI 2002/254; the Charities Act 2006 Sch 8 para 87; and the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 140, 141(b)).

6 See the London Local Authorities Act 1991 s 6(1).

7 See the London Local Authorities Act 1991 ss 6, 7, 7A (s 7 amended by the Greater London Authority Act 1999 Sch 29 para 68; and the London Local Authorities Act 1991 s 7A added by the London Local Authorities Act 2000 s 27(1), (4)). As to the provisional grant of licences see the London Local Authorities Act 1991 s 11.

8 See the London Local Authorities Act 1991 s 12.

9 See the London Local Authorities Act 1991 ss 8, 9.

10 See the London Local Authorities Act 1991 ss 13, 13A (s 13 amended by SI 2005/886; and the London Local Authorities Act 1991 s 13A added by the London Local Authorities Act 2000 s 27(1), (6)).

11 See the London Local Authorities Act 1991 s 10.

12 See the London Local Authorities Act 1991 s 14. Duly authorised officers and any constable have powers of entry to inspect and examine premises: see s 15 (amended by the Greater London Authority Act 1999 Sch 29 para 68(b); and the London Local Authorities Act 2004 s 21(2)). Any person who intentionally obstructs any person acting in the exercise of his powers of entry is guilty of an offence: see the London Local Authorities Act 1991 s 15(3).

13 As to the exceptions see the London County Council (General Powers) Act 1920 s 18 (amended by SI 1965/540; the London Council (General Powers) Act 1984 Sch 3; and SI 2002/254).

14 As to Greater London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29.

See the London County Council (General Powers) Act 1920 s 12 (amended by SI 1965/540; and the Greater London (General Powers) (No 2) Act 1978 Sch 3). The London County Council (General Powers) Act 1920 ss 12-16 are repealed by the London Local Authorities Act 1991 Schedule as from days to be appointed by individual councils in accordance with s 3. At the date at which this volume states the law no such days had been appointed.

16 See the London Local Authorities Act 1991 s 12 (as amended: see note 15) (prospectively repealed). See note 15.

17 See the London Local Authorities Act 1991 s 12 (as amended: see note 15) (prospectively repealed). See also *Dale v LCC* [1917] 1 KB 808, DC. See note 15.

18 See the London County Council (General Powers) Act 1920 s 14 (amended by SI 1965/540) (prospectively repealed). See note 15.

19 See the London County Council (General Powers) Act 1920 s 15 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46; and amended by the Greater London Council (General Powers) Act 1983 Schedule; and SI 1965/540) (prospectively repealed). See note 15. An authorised officer has powers of entry to inspect premises: see the London County Council (General Powers) Act 1920 s 13 (prospectively repealed). Directors of limited liability companies may be personally liable for penalties: see s 16 (amended by SI 1965/540) (prospectively repealed).

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(4) HAIRDRESSERS AND BARBERS

979. Hairdressers and barbers.

A local authority¹ may make byelaws² for the purpose of securing:

- 2217 (1) the cleanliness of premises on which a hairdresser's or barber's business is carried on and of the instruments, towels, materials and equipment used there³; and
- 2218 (2) the cleanliness of the hairdressers or barbers working in such premises in regard to both themselves and their clothing⁴.

It is the duty of the local authority to enforce byelaws made by it under these provisions⁵, and there is a right to enter premises⁶.

1 As to the meaning of 'local authority' see PARA 99.

2 The Secretary of State is the confirming authority as respects byelaws under these provisions: Public Health Act 1961 s 77(3). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 Public Health Act 1961 s 77(1)(a).

4 Public Health Act 1961 s 77(1)(b).

5 Public Health Act 1961 s 77(1).

6 See the Public Health Act 1936 s 287; the Public Health Act 1961 s 77(2); and PARA 114.

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20. SANITATION

(1) BATHS, WASHHOUSES AND SWIMMING POOLS

980. Provision of public baths etc.

A local authority¹ may provide public baths and washhouses, either open or covered, and with or without drying grounds². With the consent of the committee of management, if any, the trustees of any public baths, washhouses, swimming bath or bathing place may sell or lease them to a local authority³.

A local authority may provide, lay down and maintain such pipes and apparatus as may be necessary for conducting water to or from any baths, washhouse, swimming bath or bathing place which is under its management or which it proposes to provide⁴.

1 As to the meaning of 'local authority' see PARA 99.

2 Public Health Act 1936 s 221(a). This does not authorise, either expressly or impliedly, the local authority to undertake the washing of clothes: *A-G v Fulham Corpn* [1921] 1 Ch 440 (decided under earlier legislation). As to the power of local authorities to acquire land by agreement or compulsorily for the purposes of their functions see **LOCAL GOVERNMENT** vol 69 (2009) PARA 508 et seq. See also **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501 et seq.

3 Public Health Act 1936 s 228. As to the power of a local authority to provide swimming pools see PARA 981.

4 Public Health Act 1936 s 227 (amended by the Water Act 1989 Sch 25 para 5, Sch 27 Pt I; and the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 2(2)). For the purposes of the provision, laying down or maintenance in any street of any such pipes or apparatus: (1) the authority is entitled in relation to any such pipes or apparatus to exercise the same powers as, for the purpose of carrying out its functions, are conferred on a water undertaker in relation to relevant pipes by the Water Industry Act 1991 s 158 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 462); and (2) the provisions of the Water Industry Act 1991 apply, with the necessary modifications, in relation to the power conferred by virtue of head (1) above as they apply in relation to the power conferred by s 158: Public Health Act 1936 s 227 (as so amended). As to the meaning of 'street' see PARA 1004 note 9; definition applied by the Public Health Act 1936 s 227 (as so amended). As to street works see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 146 et seq. The Public Health Act 1875 s 153 (which relates to the power to require gas and water pipes to be moved) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 400), applies for the purposes of the Public Health Act 1936 as it applies for the purposes of the Public Health Act 1875: Public Health Act 1936 s 282.

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981. Provision of swimming pools.

A local authority¹ may provide, inside or outside its area, such recreational facilities as it thinks fit, including indoor and outdoor swimming pools².

A local authority may make grants or loans to voluntary organisations³ towards their expenses incurred or to be incurred in providing any recreational facilities which the authority has power to provide, and may also make grants towards the expenses incurred by other local authorities in providing such facilities⁴.

¹ As to the meaning of 'local authority' see PARA 99. The Local Government (Miscellaneous Provisions) Act 1976 s 19 has effect as if the powers conferred by that provision on local authorities were also conferred, so as to be exercisable within a national park for which a national park authority is the local planning authority, on that authority: Environment Act 1995 s 70, Sch 9 para 8. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

² See the Local Government (Miscellaneous Provisions) Act 1976 s 19(1)(a), (b); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 595.

³ 'Voluntary organisation' means any person carrying on or proposing to carry on an undertaking otherwise than for profit: Local Government (Miscellaneous Provisions) Act 1976 s 19(3).

⁴ See the Local Government (Miscellaneous Provisions) Act 1976 s 19(3); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 595.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/20. SANITATION/(1) BATHS, WASHHOUSES AND SWIMMING POOLS/982. Management.

982. Management.

A local authority¹ may make such charges for the use of, or for admission to, any baths or washhouse under its management as it thinks fit².

Any statutory undertakers³ supplying water or electricity may supply water or electricity to any public baths, washhouse, swimming bath or bathing place, either without charge or on such other favourable terms as they think fit⁴.

Any baths, washhouse, swimming bath or bathing place under the management of a local authority are deemed to be public and open places for the purposes of enactments relating to offences against decency⁵.

A local authority may temporarily close to the public any swimming bath or bathing place under its management, and may⁶: (1) grant, either gratuitously or for payment, the exclusive use of it to a school or club, or to persons organising swimming practices or contests, aquatic sports or similar entertainments⁷; or (2) use it itself for such practices, contests, sports or entertainments⁸.

1 As to the meaning of 'local authority' see PARA 99.

2 Public Health Act 1936 s 222(1) (amended by the Local Government (Miscellaneous Provisions) Act 1976 s 19(6)). One month at least before fixing any charges to be made under the Public Health Act 1936 s 222, the local authority must publish by advertisement in a local newspaper circulating in its district a notice stating its intention to consider a proposed table of charges and naming a place where a copy of the proposed table may be inspected at all reasonable hours by any person free of charge: s 222(2).

3 The Environment Agency, every water undertaker and every sewerage undertaker are deemed to be statutory undertakers, and their undertakings statutory undertakings, for the purposes of the Public Health Act 1936: Water Act 1989 s 190(1), Sch 25 para 1(1), (2)(ii) (amended by SI 1996/593). As to the Environment Agency see PARA 68 et seq. As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq; and as to sewerage undertakers see PARA 999. The holder of a licence under the Electricity Act 1989 s 6(1) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1065) is deemed to be a statutory undertaker, and his undertaking a statutory undertaking, for the purposes of the Public Health Act 1936: Electricity Act 1989 s 112(1), Sch 16 para 1(1)(ii).

4 Public Health Act 1936 s 229 (amended by the Gas Act 1995 Sch 4 para 3, Sch 6). A local authority may construct works to supply water for its own use even if there is already a statutory supply: see *West Surrey Water Co v Chertsey Union Guardians* [1894] 3 Ch 513; but see *Southport Corp'n v A-G* [1924] AC 909, HL.

5 Public Health Act 1936 s 224. As to offences against decency see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 747 et seq.

6 Public Health Act 1936 s 225(1). The authority may make, or authorise the making of, charges for admission to, or for the use of, any swimming bath or bathing place while it is so closed to the public: s 225(2).

7 Public Health Act 1936 s 225(1)(a).

8 Public Health Act 1936 s 225(1)(b).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/20. SANITATION/(1) BATHS, WASHHOUSES AND SWIMMING POOLS/983. Use of swimming baths in winter.

983. Use of swimming baths in winter.

A local authority¹ may, during any period between 1 October and 30 April, close any swimming bath or bathing place under its management, and may, at any time when it is closed, use it, or allow it to be used, or let it, for such purposes and upon such conditions as the authority thinks fit, and may adapt it for the purpose of so using or letting it². The power of the local authority to make byelaws³ extends to the making of byelaws with respect to a swimming bath or bathing place when used for any authorised purpose⁴.

Nothing in the above provisions⁵ authorises the use of a swimming bath or bathing place for the provision of regulated entertainment (within the meaning of the Licensing Act 2003⁶), unless that activity is carried on under and in accordance with an authorisation under that Act⁷.

1 As to the meaning of 'local authority' see PARA 99.

2 Public Health Act 1936 s 226(1) (amended by the Local Government Act 1948 s 132(8) Sch 2 Pt V). A local authority may provide, or contribute to the provision of, entertainments: see the Local Government Act 1972 s 145; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 595.

3 Ie under the Public Health Act 1936 s 223: see PARA 984.

4 Public Health Act 1936 s 226(2). The authorised purposes referred to in the text are any purposes authorised by s 226: see s 226(2).

5 Ie in the Public Health Act 1936 s 226.

6 See **LICENSING AND GAMBLING** vol 67 (2008) PARA 31.

7 Public Health Act 1936 s 226(3) (substituted by the Licensing Act 2003 Sch 6 para 16(b), Sch 7). As to authorisations see the Public Health Act 1936 s 136; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 26 et seq.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/20. SANITATION/(1) BATHS, WASHHOUSES AND SWIMMING POOLS/984. Byelaws as to baths etc.

984. Byelaws as to baths etc.

A local authority¹ may make byelaws for the regulation of any baths, washhouses, swimming baths and bathing places under its management, and for the regulation of persons resorting to them, including the exclusion from them of undesirable persons². Any such byelaws may, in addition to providing for the imposition of penalties, empower any officer of the local authority to exclude or remove from any baths, washhouse, swimming bath or bathing place under the management of the authority any person contravening the byelaws applicable to the premises in question³.

1 As to the meaning of 'local authority' see PARA 99.

2 Public Health Act 1936 s 223(1). A printed copy or abstract of the byelaws relating to any baths, washhouse, swimming bath or bathing place must be exhibited in a conspicuous place in the premises: s 223(2). As to byelaws generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 553 et seq.

3 Public Health Act 1936 s 223(1).

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985. Byelaws as to public bathing.

A local authority¹ may make byelaws² with respect to public bathing, and may by such byelaws³:

- 2219 (1) regulate the areas in which⁴, and the hours during which, public bathing is permitted⁵;
- 2220 (2) prohibit or restrict public bathing at times when and places as respects which warning is given, by the display of flags or by other means specified in the byelaws, that bathing is dangerous⁶;
- 2221 (3) fix the places at which bathing huts or tents may be erected⁷;
- 2222 (4) regulate the manner in which huts or tents may be used, and the charges which may be made for the use of them⁸;
- 2223 (5) require persons providing accommodation for bathing to provide and maintain life-saving appliances or other means of protecting bathers from danger⁹; and,
- 2224 (6) regulate, for preventing danger to bathers, the navigation of vessels used for pleasure purposes within areas allotted for public bathing during the hours allowed for bathing¹⁰.

Where any part of the area of a local authority having power to make such byelaws¹¹ is bounded by or is to seaward of the low water mark, the authority may exercise that power as respects any area of the sea which is outside the area of the authority and within 1,000 metres to seaward of any place where that mark is within or on the boundary of the area of the authority¹². Any offence against the byelaws may be inquired into and dealt with as if committed within the area of the authority¹³.

A local authority may make byelaws with respect to swimming baths and bathing pools, whether open or covered, which are not under its management for¹⁴: (a) securing the purity of water in the bath or pool¹⁵; (b) ensuring the adequacy and cleanliness of accommodation there¹⁶; (c) regulating the conduct of persons resorting there¹⁷; and (d) the prevention of accidents¹⁸.

1 As to the meaning of 'local authority' see PARA 99.

2 As to byelaws generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 553 et seq.

3 Public Health Act 1936 s 231(1). In and so far as a byelaw made under s 231(1) is inconsistent with byelaws made by dock undertakers, the latter prevail: s 231(2).

4 There is no common law right of bathing from the seashore: *Brinckman v Matley* [1904] 2 Ch 313, CA, following *Blundell v Catterall* (1821) 5 B & Ald 268. See also **WATER AND WATERWAYS** vol 100 (2009) PARA 46 et seq.

5 Public Health Act 1936 s 231(1)(a).

6 Public Health Act 1936 s 231(1)(aa) (added by the Local Government (Miscellaneous Provisions) Act 1976 s 17(4)).

7 Public Health Act 1936 s 231(1)(b) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 6 para 2(a), Sch 18 Pt 7).

A licence from a local authority for the use of a bathing machine confers no right, as against the owner of the seashore, to place it there: *Mace v Philcox* (1864) 15 CBNS 600. A condition in a licence that it may be revoked at any time is unreasonable and ultra vires: *Pelham v Littlehampton UDC* (1898) 63 JP 88.

8 Public Health Act 1936 s 231(1)(c) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 6 para 2(b), Sch 18 Pt 7).

The byelaws cannot restrict the charges for costumes and towels: *Parker v Clegg* (1903) 2 LGR 608, DC.

9 Public Health Act 1936 s 231(1)(e).

10 Public Health Act 1936 s 231(1)(f).

11 le under the Public Health Act 1936 s 231(1): see the text and notes 1-10.

12 Local Government (Miscellaneous Provisions) Act 1976 s 17(1). The Secretary of State may, before he confirms any byelaws made by virtue of s 17, amend the byelaws so as to reduce the area in which the byelaws have effect if it appears to him appropriate to do so with a view to ensuring that the byelaws do not have effect in an area for which another local authority has made or may make byelaws by virtue of s 17: s 17(2). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

13 Local Government (Miscellaneous Provisions) Act 1976 s 17(3).

14 Public Health Act 1936 s 233(1). This provision does not apply to any swimming bath or bathing pool which is not open to the public and for, or in connection with, the use of which no charge is made: s 233(1) proviso. The byelaws may require the person responsible for any swimming bath or bathing pool to which they apply to keep a printed copy of the byelaws exhibited in a conspicuous place on the premises: s 233(2).

15 Public Health Act 1936 s 233(1)(a).

16 Public Health Act 1936 s 233(1)(b).

17 Public Health Act 1936 s 233(1)(c).

18 Public Health Act 1936 s 233(1)(d).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/20. SANITATION/(1) BATHS, WASHHOUSES AND SWIMMING POOLS/986. Provision of bathing huts and life-saving appliances.

986. Provision of bathing huts and life-saving appliances.

A local authority¹ may provide huts or other conveniences for bathing on any land belonging to it or under its control, and may charge for their use². The authority may also provide life-saving appliances at such places, whether places used for bathing or not, as it thinks fit³.

1 As to the meaning of 'local authority' see PARA 99.

2 Public Health Act 1936 s 232.

3 Public Health Act 1936 s 234.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/20. SANITATION/(2) SANITARY CONVENIENCES/(i) Sanitary Conveniences for Buildings/987. General requirements.

(2) SANITARY CONVENIENCES

(i) Sanitary Conveniences for Buildings

987. General requirements.

There are detailed statutory provisions requiring new buildings to contain sufficient sanitary conveniences, and making requirements as to drainage and waste disposal¹. A local authority may by notice require an owner of a building to provide closets or additional closets, or in certain circumstances substituted closets, where the sanitary accommodation is insufficient or prejudicial to health².

Where a water closet is so constructed or repaired as to be prejudicial to health, or a nuisance, the person who undertook the construction or repair is guilty of an offence³.

A local authority may require an owner of a building to replace with water closets any closets which are not water closets⁴.

1 See the Building Regulations 2000, SI 2000/2531; and **BUILDING**.

2 See the Building Act 1984 s 64; and **BUILDING** vol 4(2) (2002 Reissue) PARA 387.

3 See the Building Act 1984 s 63; and **BUILDING** vol 4(2) (2002 Reissue) PARA 386.

4 See the Building Act 1984 s 66; and **BUILDING** vol 4(2) (2002 Reissue) PARA 389.

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988. Sanitary conveniences used in common.

Where a sanitary convenience¹ is used in common by the members of two or more families², any person who injures or improperly fouls it, or anything used in connection with it, or wilfully or by negligence causes an obstruction in the drain³ from it, is liable to a penalty⁴. If such a convenience, or the approach to it, is, for want of proper cleansing or attention, in such a condition as to be insanitary, such of the persons having the use of it in common as are in default, or, in the absence of satisfactory proof as to which of them is in default, each of them, are liable to a penalty⁵.

1 'Sanitary conveniences' means closets and urinals, and 'closet' includes privy: Public Health Act 1936 s 90(1).

2 Public Health Act 1936 s 52.

3 As to the meaning of 'drain' see PARA 998.

4 Public Health Act 1936 s 52(a) (amended by virtue of the Criminal Law Act 1977 s 31(6); and the Criminal Justice Act 1982 s 46). The penalty is a fine not exceeding level 1 on the standard scale: see the Public Health Act 1936 s 52(a) (as so amended). As to the prosecution of offences see PARA 128. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

5 Public Health Act 1936 s 52(b) (amended by virtue of the Decimal Currency Act 1969 s 10(1); the Criminal Law Act 1977 s 31(6); and the Criminal Justice Act 1982 s 46). The penalty is a fine not exceeding level 1 on the standard scale and, after conviction, a further fine not exceeding 25p for each day on which the offence continues: see the Public Health Act 1936 s 52(b) (as so amended).

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/20. SANITATION/(2) SANITARY CONVENIENCES/(i) Sanitary Conveniences for Buildings/989. Loan of temporary sanitary conveniences.

989. Loan of temporary sanitary conveniences.

A local authority¹ may, at the request of the occupier of any premises connected with a cesspool, sewer or drain on which any work of maintenance, improvement or repair which necessitates the disconnection of the water closets or other sanitary conveniences provided for or in connection with the premises is to be carried out by the local authority or by the owner or occupier of the premises, supply on loan temporary sanitary conveniences in substitution for any water closets or other sanitary conveniences so disconnected².

1 As to the meaning of 'local authority' see PARA 99.

2 See the Building Act 1984 s 67; and **BUILDING** vol 4(2) (2002 Reissue) PARA 390. In certain circumstances a charge may be made: see s 67; and **BUILDING** vol 4(2) (2002 Reissue) PARA 390.

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990. Sanitary appliances at places of entertainment.

A local authority¹ (other than a county council and the Greater London Council) may, by a notice² served on an owner³ or occupier of a relevant place⁴ in its area⁵, require him: (1) to provide, before the expiration of a specified period and in such positions at the place as are specified, sanitary appliances⁶ of such kinds and numbers as are so specified⁷; (2) to maintain and keep clean the appliances to the authority's reasonable satisfaction⁸; (3) to provide and maintain a proper supply of such things for use in connection with the appliances as are so specified⁹; and (4) to make the appliances and things available for use by members of the public resorting to the place¹⁰.

Such a notice may require the provision of sanitary appliances on specified occasions, but if it does so it must not also require the provision of sanitary appliances in respect of unspecified occasions¹¹. The notice must not require the provision of a different kind of fixed sanitary appliance, or more numerous appliances, than could be required by building regulations if the building were being newly constructed¹², and may not require the provision of movable sanitary appliances at a betting office¹³. However, the notice must specify as the period before the expiration of which sanitary appliances are to be provided a period equal to or longer than that during which the recipient of the notice may appeal against it¹⁴. In complying with the notice the person on whom it is served must provide, so far as is practicable and reasonable, for the needs of persons frequenting the relevant place who are disabled¹⁵.

A person who without reasonable excuse fails to comply with a notice is guilty of an offence¹⁶ and is liable to a penalty¹⁷. If, after conviction, the failure in question continues, the person convicted is guilty of a further offence as respects each day on which it continues and is liable to a further penalty¹⁸.

Any person authorised in writing in that behalf by the local authority (other than a county council and the Greater London Council) may at any reasonable time, and on production, if required, of evidence of his authority, enter any relevant place for the purpose of determining whether such a notice should be served or of ascertaining whether the requirements of such a notice are being complied with; and a person wilfully obstructing another person acting in the exercise of such powers is guilty of an offence and liable to a penalty¹⁹.

1 As to the meaning of 'local authority' see PARA 99.

2 The notice may be served on an owner or occupier notwithstanding that he is for the time being required to comply with a previous such notice served on him in respect of the place (Local Government (Miscellaneous Provisions) Act 1976 s 20(4)(a)), and may require the provision at the place of appliances already provided there (s 20(4)(b)). The notice must draw the attention of the person on whom it is served to the Chronically Sick and Disabled Persons Act 1970 ss 6(1), 7 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1067) and to the Code of Practice for Access for the Disabled to Buildings (ie BS 5810: 1979): Local Government (Miscellaneous Provisions) Act 1976 s 20(11), (12) (added by the Disabled Persons Act 1981 s 4).

3 'Owner', in relation to land, place or premises, means a person who, either on his own account or as agent or trustee for another person, is receiving the rackrent of the land, place or premises or would be entitled to receive it if the land, place or premises were let at a rackrent: Local Government (Miscellaneous Provisions) Act 1976 s 44(1).

4 'Relevant place' means: (1) a place normally used or proposed to be normally used for the holding of any entertainment, exhibition or sporting event to which members of the public are admitted either as spectators or

otherwise, or for the sale of food or drink to members of the public for consumption at the place; (2) a place used or proposed to be used on some occasion or occasions for any of those purposes; and (3) a betting office: Local Government (Miscellaneous Provisions) Act 1976 s 20(9). 'Betting office' means premises, other than a track within the meaning of the Gambling Act 2005, in respect of which a betting premises licence under Pt 8 (ss 150-213) (see **LICENSING AND GAMBLING** vol 67 (2008) PARA 460) has effect: Local Government (Miscellaneous Provisions) Act 1976 s 20(9) (definition substituted by the Gambling Act 2005 Sch 16 Pt 12 para 8).

5 Local Government (Miscellaneous Provisions) Act 1976 s 20(1).

6 'Sanitary appliances' means water closets, urinals and wash basins: Local Government (Miscellaneous Provisions) Act 1976 s 20(9).

7 Local Government (Miscellaneous Provisions) Act 1976 s 20(1)(a).

8 Local Government (Miscellaneous Provisions) Act 1976 s 20(1)(b).

9 Local Government (Miscellaneous Provisions) Act 1976 s 20(1)(c). This may be or include cold or hot water or both: s 20(1)(c).

10 Local Government (Miscellaneous Provisions) Act 1976 s 20(1)(d). The notice may require such appliances to be made available free of charge: s 20(1)(d).

11 Local Government (Miscellaneous Provisions) Act 1976 s 20(2).

12 See the Local Government (Miscellaneous Provisions) Act 1976 s 20(3)(a). See the Building Regulations 2000, SI 2000/2531; and **BUILDING**.

13 Local Government (Miscellaneous Provisions) Act 1976 s 20(3)(b).

14 Local Government (Miscellaneous Provisions) Act 1976 s 20(3)(c). This does not apply if the notice is an occasional notice: s 20(3)(c). An 'occasional notice' means a notice requiring the provision of sanitary appliances on specified occasions: s 20(9). As to appeals see PARA 991.

15 Chronically Sick and Disabled Persons Act 1970 s 6(1) (amended by the Local Government (Miscellaneous Provisions) Act 1976 s 20(10)).

16 Local Government (Miscellaneous Provisions) Act 1976 s 20(6). It is a defence to prove that at the time of the failure the person served was neither an owner nor an occupier of the relevant place and that he did not cease to be an owner or occupier by reason of anything done or omitted by him or any other person with a view to avoiding compliance with the notice: s 20(7). Where an offence is alleged to have been committed on a particular day, it is a defence to prove that on that day the relevant place was closed to the public or was used neither as a betting office nor for any of the purposes mentioned in note 4 head (1): s 20(8). In proceedings for an offence of failing to comply with an occasional notice, it is a defence to prove that the alleged offence is in respect of a requirement of the notice which is unreasonable (s 20(8)(a)); or that it would have been fairer to serve the notice on a person, other than the defendant, who was an owner or occupier of the relevant place when the notice was served, and whose name and address were furnished by the defendant to the local authority before the expiration of the period specified in the notice in pursuance of s 20(1)(a) (see the text and note 7) (s 20(8)(b)).

17 Local Government (Miscellaneous Provisions) Act 1976 s 20(6) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2), (9)). The penalty on summary conviction is a fine not exceeding the prescribed sum, and on conviction on indictment is a fine: see the Local Government (Miscellaneous Provisions) Act 1976 s 20(6) (as so amended). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

18 Local Government (Miscellaneous Provisions) Act 1976 s 20(6) (as amended: see note 17). The penalty on summary conviction is a fine not exceeding £50, and on conviction on indictment is a fine: see s 20(6) (as so amended).

19 Local Government (Miscellaneous Provisions) Act 1976 s 20(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The penalty on summary conviction is a fine not exceeding level 3 on the standard scale: see the Local Government (Miscellaneous Provisions) Act 1976 s 20(5) (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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991. Appeals as to sanitary appliances at places of entertainment.

A person on whom a notice¹ relating to sanitary appliances at places of entertainment, other than an occasional notice², is served may appeal³ to the county court against the notice on one or both of the following grounds⁴: (1) that a requirement of the notice is unreasonable⁵; and (2) that it would have been fairer to serve the notice on another person who is an owner⁶ or occupier of the relevant place⁷ in question⁸. The court may quash the notice to which the appeal relates⁹, modify it so as to impose its requirements on another person who is the owner or occupier of the relevant place¹⁰, order that the appellant be entitled to recover from that other person a specified part of the expenses incurred by the appellant in complying with the notice¹¹, or dismiss the appeal¹².

Pending the determination of an appeal, the notice is of no effect¹³. Except where it quashes the notice, the court may extend the period specified¹⁴ in the notice¹⁵.

1 le a notice under the Local Government (Miscellaneous Provisions) Act 1976 s 20: see PARA 990.

2 As to the meaning of 'occasional notice' see PARA 990 note 14.

3 The appeal must be made within six weeks beginning with the date of service of the notice: Local Government (Miscellaneous Provisions) Act 1976 s 21(1).

4 Local Government (Miscellaneous Provisions) Act 1976 s 21(1)(a).

5 Local Government (Miscellaneous Provisions) Act 1976 s 21(1)(b).

6 As to the meaning of 'owner' see PARA 990 note 3.

7 As to the meaning of 'relevant place' see PARA 990 note 4.

8 Local Government (Miscellaneous Provisions) Act 1976 s 21(1)(b). Where the appeal is based on the ground in head (2) in the text, that other person must be made a respondent unless the court otherwise directs: see s 21(2).

9 Local Government (Miscellaneous Provisions) Act 1976 s 21(3)(a).

10 Local Government (Miscellaneous Provisions) Act 1976 s 21(3)(b). The court may only so modify the notice if the appeal was on the ground in head (2) in the text: s 21(3). Where the court so modifies the notice, the notice is deemed to have been served on that person on the date of the modification, but he may not appeal against the notice: s 21(4).

11 Local Government (Miscellaneous Provisions) Act 1976 s 21(3)(c). The court may only so order if the appeal was on the ground in head (2) in the text: s 21(3). In so ordering the court must have regard to any agreement relating to the relevant place to which either person is a party: s 21(5).

12 Local Government (Miscellaneous Provisions) Act 1976 s 21(3)(d).

13 Local Government (Miscellaneous Provisions) Act 1976 s 21(6).

14 le in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 20(1)(a): see PARA 990.

15 Local Government (Miscellaneous Provisions) Act 1976 s 21(6).

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992. Sanitary conveniences in workplaces and for agricultural workers.

There are special statutory requirements as to the provision and maintenance of sanitary conveniences in workplaces¹.

Landlords and occupiers of agricultural land and agricultural contractors may be required to provide, maintain and keep clean sanitary conveniences for the use of agricultural workers and persons whose conditions of work are similar to those of agricultural workers².

1 See **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 474.

2 See **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1246.

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993. Sanitary conveniences for the disabled.

Any person undertaking the provision of any building or premises to which the public is to be admitted, whether on payment or otherwise, must make provision, in the sanitary conveniences and parking facilities to be available, if any, in so far as it is both practicable and reasonable, for the needs of members of the public visiting the building or premises who are disabled¹.

Any person undertaking the provision of educational buildings, factories, offices, shops or railway premises, must make provision, in the sanitary conveniences to be available, for the needs of disabled persons in so far as it is both practicable and reasonable².

The Secretary of State must report to Parliament on his proposals for ensuring or facilitating the improvement of means of access for disabled persons to any such building or premises, and also to public and other sanitary conveniences³.

Where any local authority undertakes the provision of a public sanitary convenience it must make provision, in doing so, for the needs of disabled persons in so far as it is both practicable and reasonable⁴.

1 See the Chronically Sick and Disabled Persons Act 1970 s 4(1); and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1067.

2 See the Chronically Sick and Disabled Persons Act 1970 s 8A; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1066.

3 See the Chronically Sick and Disabled Persons Act 1970 s 8B; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1068. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 See the Chronically Sick and Disabled Persons Act 1970 s 5; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1067.

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994. Care of closets.

The occupier of a building in or in connection with which a water closet¹ or an earth closet² is provided must, in the case of a water closet, cause the flushing apparatus to be kept supplied with water sufficient for flushing and, where necessary, to be properly protected against frost, and must, in the case of an earth closet, cause it to be kept supplied with dry earth or other suitable deodorising material³. A person who fails to comply with these provisions is liable to a penalty⁴.

1 'Water closet' means a closet which has a separate fixed receptacle connected to a drainage system and separate provision for flushing from a supply of clean water, either by the operation of mechanism or by automatic action; and 'closet' includes privy: Public Health Act 1936 s 90(1). In its application to Greater London, s 51 has effect as if any reference to a water closet included a reference to a urinal: London Government Act 1963 s 40(1), Sch 11 Pt I para 13.

2 'Earth closet' means a closet having a moveable receptacle for the reception of faecal matter and its deodorisation by the use of earth, ashes or chemicals, or by other methods: Public Health Act 1936 s 90(1).

3 Public Health Act 1936 s 51(1). In its application to Greater London, s 51 has effect as if it required the occupier of every building in or in connection with which a urinal is provided to cause the urinal to be supplied with flushing apparatus: London Government Act 1963 Sch 11 Pt I para 13.

4 Public Health Act 1936 s 51(2) (amended by virtue of the Criminal Law Act 1977 s 31(6); and the Criminal Justice Act 1982 s 46). The penalty is a fine not exceeding level 1 on the standard scale: see the Public Health Act 1936 s 51(2) (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the prosecution of offences see PARA 128.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/20. SANITATION/(2) SANITARY CONVENIENCES/(ii) Public Conveniences/995. Conveniences in or accessible from streets.

(ii) Public Conveniences

995. Conveniences in or accessible from streets.

No public sanitary convenience may be erected in, or so as to be accessible from, any street without the consent of the local authority¹. The authority may by notice require the owner of a sanitary convenience erected in contravention of this provision to remove it, and may also by notice require the owner of a sanitary convenience which opens on a street and is so placed or constructed as to be a nuisance or offensive to public decency to remove or permanently to close it².

1 See the Building Act 1984 s 68; and **BUILDING** vol 4(2) (2002 Reissue) PARA 391. As to the meaning of 'local authority' see PARA 99.

2 See the Building Act 1984 s 68(4); and **BUILDING** vol 4(2) (2002 Reissue) PARA 391.

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996. Provision of public conveniences.

A county council, local authority¹ or parish or community council may provide sanitary conveniences² in proper and convenient situations³, but must not do so in or under a highway or proposed highway for which it is not the highway authority without the consent of the highway authority⁴. Any such council or authority providing public sanitary conveniences may⁵: (1) make byelaws as to the conduct of persons using or entering them⁶; (2) let them for such term, at such rent and subject to such conditions as it thinks fit⁷; and (3) charge such fees for their use as it thinks fit⁸.

In providing public conveniences, provision must be made for the needs of disabled persons⁹.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'sanitary conveniences' see PARA 988 note 1. In this context it includes lavatories: Public Health Act 1936 s 87(4).

3 Public Health Act 1936 s 87(1) (substituted by the Local Government Act 1972 Sch 14 para 9(1); and amended by the Local Government Act 1985 Sch 17). Turnstiles may not be erected at public lavatories: see PARA 997. Where incorporated in a local Act, the Towns Improvement Clauses Act 1847 s 93 gives an alternative power to erect urinals. Provisions of this kind give power to erect conveniences in a highway (see *Vernon v St James, Westminster, Vestry* (1880) 16 ChD 449 at 472, CA, per Lush LJ), but where the subsoil is not vested in the local authority it has been held that it had no power under a local Act to erect an underground lavatory under a street (*Tunbridge Wells Corpn v Baird* [1896] AC 434, HL). The choice of place for the convenience is discretionary, but the authority must act in good faith and not unreasonably so as to create a nuisance: *Biddulph v St George's, Hanover Square, Vestry* (1863) 3 De GJ & Sm 493; *Vernon v St James, Westminster, Vestry* above. In *Westminster Corpn v London and North Western Rly Co* [1905] AC 426, HL, it was found that the authority had acted in good faith in erecting conveniences under a street together with subway approaches, although the subway served as a way for pedestrians to pass under the street. If a nuisance is caused, it is no defence to show that the sanitary condition of the neighbourhood has been improved by the provision of a convenience: *Parish v City of London Corpn* (1901) 67 JP 55.

4 Public Health Act 1936 s 87(2) (substituted by the Local Government Act 1972 Sch 14 para 9(1)). As to highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 49 et seq.

5 Public Health Act 1936 s 87(3) (amended by the Local Government Act 1972 Sch 14 para 9(2)). As to byelaws generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 553 et seq.

6 Public Health Act 1936 s 87(3)(a).

7 Public Health Act 1936 s 87(3)(b).

8 Public Health Act 1936 s 87(3)(c) (amended by SI 2008/963).

9 See PARA 993.

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997. Turnstiles at public lavatories.

No turnstile may be installed in or in any entrance or exit of any public lavatory or public sanitary convenience¹ controlled or managed by a local authority². It is the duty of local authorities to ensure that this provision is complied with notwithstanding anything in any other Act, whether public or local³, and this duty is enforceable by mandatory order on the application of the Secretary of State⁴.

1 The power to provide sanitary conveniences (which includes lavatories) is conferred by the Public Health Act 1936 s 87: see PARA 996.

2 Public Lavatories (Turnstiles) Act 1963 s 1(1). This provision also required local authorities to remove any existing turnstiles in such places by 31 January 1964. As to the meaning of 'local authority' see PARA 99.

3 Public Lavatories (Turnstiles) Act 1963 s 1(2).

4 Public Lavatories (Turnstiles) Act 1963 s 1(3). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As to mandatory orders (formerly orders of mandamus) see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 133 et seq.

Halsbury's Laws of England/ENVIRONMENTAL QUALITY AND PUBLIC HEALTH (VOLUME 45 (2010) 5TH EDITION, PARAS 1-575; VOLUME 46 (2010) 5TH EDITION, PARAS 576-1081)/21. SEWERS AND DRAINS/(1) INTRODUCTION/998. Meanings of 'sewer', 'drain', etc.

21. SEWERS AND DRAINS

(1) INTRODUCTION

998. Meanings of 'sewer', 'drain', etc.

Except where defined by statute¹, the terms 'sewers' and 'drains' have no special technical meanings in law; they are words in popular use of somewhat similar connotation, meaning channels by which liquid is carried off by gravity. In particular they mean artificial channels for draining water from land or for carrying away waste water and feculent and polluted matter from houses and other buildings².

In statutory definitions, however, a distinction is drawn between sewers and drains³. Furthermore, 'sewer' sometimes means more than the mere channel and includes the whole apparatus for drawing off and dealing with the water or other liquid⁴.

In the Public Health Act 1936 and the Water Industry Act 1991, 'drain' means a drain used for the drainage of one building⁵ or of any buildings or yards appurtenant to buildings within the same curtilage⁶; and 'sewer' does not include a drain as so defined, but otherwise includes all sewers and drains used for the drainage of buildings⁷ and yards appurtenant to buildings⁸.

In the provisions of the Building Act 1984 relating to sanitation and buildings⁹, 'drain' means a drain used for the drainage of one building or of buildings or yards appurtenant to buildings within the same curtilage, and includes any manholes, ventilating shafts, pumps or other accessories belonging to the drain¹⁰. 'Sewer' does not include a drain as so defined, but otherwise it includes all sewers and drains used for the drainage of buildings and yards appurtenant to buildings, and any manholes, ventilating shafts, pumps or other accessories belonging to the sewer¹¹.

A pipe or conduit, although it may be laid in private land, is thus a sewer so far as it drains more than one building or curtilage¹²; and an existing drain is converted into a sewer up to the point of connection when a second building is drained into it¹³. It seems that a pipe which terminates in a pit or cesspit and does not carry the effluent away is not a sewer even though it drains more than one building¹⁴; but if it has an outfall, albeit inefficient, it will be a sewer¹⁵. A natural watercourse cannot¹⁶ be turned into a sewer by the discharge of sewage into it¹⁷. On the other hand, a channel used merely to carry off water may be a sewer¹⁸ even if it is not clearly defined¹⁹, and a pipe used for temporary purposes may be a sewer²⁰.

In the Water Industry Act 1991, references to a pipe, including references to a main, a drain or a sewer, include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe²¹; and references to any sewage disposal works include references to the machinery and equipment of those works and any necessary pumping stations and outfall pipes²². Accordingly, references to the laying of a pipe include references to the construction of such a tunnel or conduit, to the construction or installation of any such accessories and to the making of a connection between one pipe and another²³.

The sewers and drains that are the subject of this title are, primarily, those controlled by sewerage undertakers²⁴.

1 As to the statutory meanings of 'sewer' and 'drain' see the text and notes 5-11.

2 Apart from statutory definitions, 'sewer' and 'drain' would in law mean the same, for example when used in a conveyance: see *Pilbrow v St Leonard, Shoreditch, Vestry* [1895] 1 QB 433 at 441, CA, per Rigby LJ. See also *Doncaster Borough Council v Secretary of State for the Environment* [1996] 2 PLR 39, 74 P & CR 428, where the word 'sewer' was held to embrace a ditch. 'Sewer' in the common sense of the term means a large and generally (although not always) underground passage for fluid and feculent matter from a house or houses to some other locality, but does not comprise a cesspool for the purpose of retaining the sewage: *Sutton v Norwich Corp* (1858) 27 LJ Ch 739 at 742 per Kindersley V-C. In the fen districts 'drain' is applied to wide, canal-like navigable channels: see the Oxford English Dictionary; Johnson's Dictionary; and cf *Coulton v Ambler* (1844) 13 M & W 403 (where the Eau Brink Cut, used for drainage purposes and as a navigable river, was held not be a 'public or parish drain' within 4 Geo 4 c lv (1823) s 35).

3 See the text and notes 5-11.

4 A marsh wall or embankment to protect the drained land may be part of a sewer: *Poplar District Board of Works v Knight and Weitzell* (1858) EB & E 408. A manhole may be part of a sewer: *Swanston v Twickenham Local Board* (1879) 11 ChD 838, CA. In the circumstances of the case there had been insufficient change to a channel or the flow in it for it to be a sewer rather than a watercourse: *Raglan Housing Association Ltd v Southampton City Council* [2007] EWCA Civ 785, [2008] 2 All ER 44. As to the meaning of 'watercourse' see PARA 1004 note 4.

5 Whether two or more houses constitute one building for this purpose is a question of fact, and two semi-detached houses may, according to their construction, form one building (*Hedley v Webb* [1901] 2 Ch 126; *Cook v Minion* (1978) 37 P & CR 58) or two (*Humphery v Young* [1903] 1 KB 44, DC). Houses in terrace with a continuous roof but occupied as separate dwelling houses have been held to be separate buildings and not within the same curtilage: *Weaver v Family Housing Association (York) Ltd* (1975) 74 LGR 255, [1976] JPL 92, HL.

6 See the Public Health Act 1936 s 343(1); and the Water Industry Act 1991 s 219(1). See also the Water Industry Act 1991 s 219(2); and the text and notes 21-23. As to the meaning of 'lateral drain' see PARA 1003 note 2. The question of what is the curtilage does not depend upon conveyancing law, but on considerations relating to the mode of building, the object for which the buildings were erected and the manner in which they have been used: *Pilbrow v St Leonard, Shoreditch, Vestry* [1895] 1 QB 433, CA. In this case, two blocks of buildings let out in a number of separate tenements and standing in an inclosed yard were held to be within the same curtilage. However, separate houses abutting on and surrounding a private court have been held not to be so: *St Martin-in-the-Fields Vestry v Bird* [1896] 1 QB 428, CA (the Lowther Arcade); *Harris v Scurfield* (1904) 68 JP 516, DC. See also *Bromley London Borough Council v Morritt* (1999) 79 P & CR 536, [2000] EHLR 24, CA (as to whether a pipe is a public sewer for the purposes of the definition).

7 The words 'used for the drainage of buildings' connote the functions for which the pipe is constituted and not its actual use: *Blackdown Properties Ltd v Ministry of Housing and Local Government* [1967] Ch 115, [1965] 2 All ER 345. See also *British Railways Board v Tonbridge and Malling District Council* [1982] JPL 310, (1981) 79 LGR 565, CA.

8 See the Public Health Act 1936 s 343(1); and the Water Industry Act 1991 s 219(1). See also the Water Industry Act 1991 s 219(2); and the text and notes 21-23. A sewer as defined in the text is exempted from rates: see the Local Government Finance Act 1988 s 51, Sch 5 para 13; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 50.

9 See **BUILDING**.

10 Building Act 1984 s 126.

11 Building Act 1984 s 126.

12 *Travis v Uttley* [1894] 1 QB 233, DC; *Beckenham UDC v Wood* (1896) 60 JP 490, DC; *Pemsel and Wilson v Tucker* [1907] 2 Ch 191; *Ashton v Haine* (1922) 153 LT Jo 264; *A-G v Peacock* [1926] Ch 241; *Hill v Aldershot Corp* [1933] 1 KB 259, CA. A pipe laid unlawfully by trespass is not a sewer unless the landlord afterwards consents: *Meador v West Cowes Local Board* [1892] 3 Ch 18, CA; *Hedley v Webb* [1901] 2 Ch 126; *Pakenham v Ticehurst RDC* (1903) 67 JP 448. A sewer does not automatically vest in the sewerage undertaker: see the Water Industry Act 1991 s 102; and PARA 1004. As to sewerage undertakers see PARA 999. A line of pipes laid in a street, or intended street, to take the sewage of the houses was a sewer within the Public Health Act 1875 s 4 (repealed), even though no buildings had been connected with them, or even built (*Acton Local Board v Batten* (1884) 28 ChD 283 at 286 per Kay J; *Beckenham UDC v Wood* above at 491 per Cave J; *Turner v Handsworth UDC* [1909] 1 Ch 381), but in that Act 'sewer' was not restricted to sewers and drains used for the drainage of buildings and yards, and, so far as is known, it was not specifically decided whether such a line of pipes to which one building only had been connected was a sewer or a drain. A pipe receiving the contents of a sewer is a sewer: *Wood Green UDC v Joseph* [1908] AC 419 at 423, HL, per Lord Ashbourne. Under the Public Health Acts

Amendment Act 1890 s 19 (repealed), a pipe draining more than one building or curtilage might be a 'single private drain', but it still remained a sewer within the meaning of the Public Health Act 1875 s 4 (repealed): *R v Hastings Corpn* [1897] 1 QB 46 DC; *Pemsel and Wilson v Tucker* above; *Wood Green UDC v Joseph* above; *Hill v Aldershot Corpn* above. See *Weaver v Family Housing Association (York) Ltd* (1975) 74 LGR 255, HL. See also *City of Bradford City Metropolitan District Council v Yorkshire Water Services Ltd* [2002] EWHC Admin 687, [2002] Env LR 16, [2002] 1 EGLR 85 (in regard to the interpretation of the Public Health Act 1875 s 4 (repealed)).

13 This is so even if the connection is made without the knowledge or consent of the local authority: *Kershaw v Taylor* [1895] 2 QB 471, CA; *Florence v Paddington Vestry* (1895) 12 TLR 30; *Holland v Lazarus* (1897) 66 LJQB 285; *Green v St Mary, Newington, Vestry* [1898] 2 QB 1, DC; *St Matthew, Bethnal Green, Vestry v London School Board* [1898] AC 190, HL; *Bullock v Reeve* (1900) 70 LJQB 42, DC; *Harvey v Busby* (1906) 95 LT 91, DC; *Harvey v Jaye* (1907) 97 LT 543, DC. Where the connection is made unlawfully, the wrongdoer, or his representative who is not a purchaser for value without notice, is estopped from alleging against the local authority that the pipe is then a sewer: *Gorringe v Shoreditch Corpn* (1902) 86 LT 592, DC, per Channell J; *Heaver v Fulham Borough Council* [1904] 2 KB 383. However, a change in the ownership of the houses does not alter the character of a pipe from a drain to a sewer: *Greater London Property Co Ltd v Foot* [1899] 1 QB 972 at 977, DC, per Darling J. Cutting off other drainage from a sewer so that it conveys the drainage from one house only does not convert it into a drain (*St Leonard, Shoreditch, Vestry v Phelan* [1896] 1 QB 533, DC); and in the case of a combined drain under the Public Health (London) Act 1936 Pt II (repealed), a mere deviation in the course of the combined drain did not convert it into a sewer (*Greater London Property Co v Foot* above); nor did the addition of drainage of other premises within the same curtilage (*Gorringe v Shoreditch Corpn* above). See also *Kershaw v Alfred John Smith & Co Ltd* [1913] 2 KB 455, DC (reinstatement according to the original plan).

14 *Meador v West Cowes Local Board* [1892] 3 Ch 18, CA; *Button v Tottenham UDC* (1898) 78 LT 470, DC; *Pakenham v Ticehurst RDC* (1903) 67 JP 448; *A-G v Peacock* [1926] Ch 241; *Clark v Epsom RDC* [1929] 1 Ch 287. It is not clear whether this applies under the current legislation. See also *Sutton v Norwich Corpn* (1858) 27 LJ Ch 739; and note 2.

15 *Pakenham v Ticehurst RDC* (1903) 67 JP 448; *A-G v Peacock* [1926] Ch 241; *Clark v Epsom RDC* [1929] 1 Ch 287.

16 Ie since 15 August 1876, the date of the passing of the Rivers Pollution Prevention Act 1876 (repealed). However, see *United Utilities Water Ltd v Sefton Metropolitan Borough Council* [2001] EWCA Civ 1284, [2001] All ER (D) 477 (Jul) (culverted watercourse could become a sewer within the meaning of the Public Health Act 1936). As to the control of pollution of water see the Water Resources Act 1991 Pt III (ss 82-104); and PARA 289 et seq. As to the control of pollution generally see PARA 158 et seq.

17 *George Legge & Son Ltd v Wenlock Corpn* [1938] AC 204, [1938] 1 All ER 37, HL, following *Airdrie Magistrates v Lanark County Council* [1910] AC 286, HL; *West Riding of Yorkshire Rivers Board v Reuben Gaunt & Sons Ltd* (1902) 67 JP 183, DC. See also *West Riding of Yorkshire Rivers Board v Yorkshire Indigo, Scarlet and Colour Dyers Ltd* (1902) 67 JP 80, DC. Were it not for the enactments by which it is illegal, a natural watercourse might in some cases become a sewer: see *Pentney v Lynn Paving Comrs* (1865) 12 LT 818; *R v Godmanchester Local Board* (1866) LR 1 QB 328, Ex Ch; *Wheatcroft v Matlock Local Board* (1885) 52 LT 356; *Falconar v South Shields Corpn* (1895) 11 TLR 223, CA; *Glasgow, Yoker and Clydebank Rly Co v Macindoe* (1896) 24 R (Ct of Sess) 160; *Newcastle-upon-Tyne Corpn v Houseman* (1898) 63 JP 85; *West Riding of Yorkshire Rivers Board v Preston & Sons* (1904) 92 LT 24, DC; *Pearce v Croydon RDC* (1910) 74 JP 429; *Shepherd v Croft* [1911] 1 Ch 521; *A-G v Lewis Corpn* [1911] 2 Ch 495.

18 Moreover, a drain may be converted into a sewer if another drain from a second building carrying rainwater only is connected with it: *Holland v Lazarus* (1897) 66 LJQB 285; *Silles v Fulham Borough Council* [1903] 1 KB 829, CA; *Wilkinson v Llandaff and Dinas Powis RDC* [1903] 2 Ch 695, CA; *Kershaw v Paine* (1913) 78 JP 149, DC.

19 *Wilkinson v Llandaff and Dinas Powis RDC* [1903] 2 Ch 695, CA. Cf *Pearce v Croydon RDC* (1910) 74 JP 429, where the course of a bourne flow was held not to be a sewer.

20 *Tottenham Local Board of Health v Button* (1886) 2 TLR 828.

21 Water Industry Act 1991 s 219(2)(a).

22 Water Industry Act 1991 s 219(2)(b). 'Disposal', in relation to sewage, includes treatment: s 219(1).

23 Water Industry Act 1991 s 219(2).

24 As to public sewers and drains controlled by sewerage undertakers see PARA 999 et seq. As to private sewers and drains see PARA 1073 et seq. As to drainage of highways see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 285. In the past, because the highway authority was in many cases the local authority for

sanitary purposes, roads and streets were commonly drained into the same sewers as were houses and buildings. This fact is of importance historically, but the sewerage authority is now the sewerage undertaker: see PARAS 999-1001. As to the power of a highway authority to use public sewers see PARA 1046. As to the vesting in sewerage undertakers of sewers constructed under the private street works legislation see PARAS 1000-1001. As to drainage of land for the prevention of flooding see **WATER AND WATERWAYS** vol 101 (2009) PARA 559 et seq. As to the pollution of watercourses by sewage see PARA 270 et seq. As to the support of sewers see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 139; and as to rights to support see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 180 et seq. For building regulations relating to the drainage of buildings see **BUILDING** vol 4(2) (2002 Reissue) PARAS 303 et seq, 382 et seq.

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(2) PUBLIC SEWERS AND DRAINS AND SEWAGE DISPOSAL

(i) Vesting in Sewerage Undertakers

999. Sewerage undertakers.

Following the reform and consolidation of the law relating to water¹, the functions of water authorities relating to the provision of sewerage services have been transferred to sewerage undertakers².

¹ See **WATER AND WATERWAYS** vol 100 (2009) PARA 413.

² As to the transfer of sewerage functions of the water authorities to sewerage undertakers see the Water Act 1989 s 4; and **WATER AND WATERWAYS** vol 100 (2009) PARA 108 et seq. See also s 69, Sch 8 (amended by the Water Consolidation (Consequential Provisions) Act 1991 Sch 3 Pt I). As to the transfer of sewers see PARA 1001. As to the appointment of sewerage undertakers see the Water Industry Act 1991 s 6; and **WATER AND WATERWAYS** vol 100 (2009) PARA 137.

Provisions of the Water Industry Act 1991 refer to the 'relevant undertaker', which means a water undertaker or a sewerage undertaker: see s 219(1); and **WATER AND WATERWAYS** vol 100 (2009) PARA 137. For the purposes of this title, the relevant undertaker is the sewerage undertaker.

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1000. Public sewers.

'Public sewer' means a sewer¹ for the time being vested² in a sewerage undertaker³ in its capacity as such⁴.

1 As to the meaning of 'sewer' see PARA 998.

2 I.e. whether vested by virtue of a scheme under the Water Act 1989 s 4, Sch 2 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 108), or the Water Industry Act 1991 s 10, s 23, Sch 2 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 141), or under s 179 (see PARA 1003), or otherwise.

3 As to sewerage undertakers see PARA 999.

4 Public Health Act 1936 s 343 (definition substituted by the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 2(4)); Water Industry Act 1991 s 219(1) (definition amended by the Water Act 2003 s 99(1), (6)). The latter definition is subject to the Water Industry Act 1991 s 106(1A): see PARA 1041. See also *Bromley London Borough Council v Morritt* [2000] EHLR 24, 79 P & CR 536, CA.

'Private sewer' is to be construed accordingly: Water Industry Act 1991 s 219(1). As to private sewers see PARA 1073 et seq.

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1001. Transfer of sewers to sewerage undertakers.

Certain categories of sewers¹ previously vested in local authorities² became vested in water authorities³ by virtue of the Local Government Act 1972⁴.

On the privatisation of the water industry⁵, the water authorities were abolished and their sewerage functions were transferred to sewerage undertakers⁶. All sewers which were on 1 September 1989 vested in one of the former water authorities⁷ vested on that date in the successor company appointed in each case to act as sewerage undertaker⁸.

1 The categories of sewers were:

165 (1) All sewers within the meaning of the Public Health Act 1875 which, by virtue of that Act, were, immediately before 1 October 1937 (ie the date on which the Public Health Act 1936 came into force: see s 347(1)), vested in a local authority, that is to say, sewers and drains of every description which existed on 11 August 1875 (ie the date of the passing of the Public Health Act 1875) or which were constructed after that date and before 1 October 1937, except: (a) drains as defined in that Act; (b) drains vested in or under the control of any authority having the management of roads and not being a local authority under that Act; (c) sewers made by any person for his own profit or by any company for the profit of the shareholders; (d) sewers made and used for the purpose of draining, preserving or improving land under any local or private Act (which included sewers constructed by a railway company whose special Act incorporated the Railways Clauses Consolidation Act 1845: *London and North Western Rly Co v Runcorn RDC* [1898] 1 Ch 561, CA), or for the purpose of irrigating land; (e) sewers under the authority of any commissioners of sewers appointed by the Crown; and (f) sewers vested in a sewage board or other authority empowered by statute to construct sewers: see the Public Health Act 1875 ss 4, 13 (both repealed). Sewers were vested thus in the local authority of the district in which they were situated, although sewers constructed by or transferred to some other local authority, or by or to a sewage board or other authority having power by statute to construct sewers, were, subject to any agreement to the contrary, vested in and under the control of the authority which had constructed them or to which they had been transferred: see s 13 (repealed). Future sewers after 1 October 1937 did not vest in a local authority unless they did so as public sewers under the Public Health Act 1936 s 20 (as originally enacted), or had been constructed by the local authority to drain its own property. A drain which was once within the exception in head (b) above did not become a sewer by reason that it subsequently became vested in any authority having the powers both of a sanitary authority and of a highway authority: *Williamson v Durham RDC* [1906] 2 KB 65, DC; *Irving v Carlisle RDC* (1907) 71 JP 212, DC. A highway drain vested in the county council did not become a sewer vested in the local authority when an unauthorised connection was made between a house and the drain (*Rickarby v New Forest RDC* (1910) 74 JP 441, DC), but a drain vested in a local authority and draining houses as well as the road was such a sewer (*Wilkinson v Llandaff and Dinas Powis RDC* [1903] 2 Ch 695, CA). In the Public Health Act 1875, 'drain' meant any drain of, and used for the drainage of, one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage or with a sewer into which the drainage of two or more buildings or premises occupied by different persons was conveyed: s 4 (repealed). As to the meanings of 'sewer' and 'drain' generally see PARA 998. In the Public Health Act 1875, 'local authority' meant an urban sanitary authority or a rural sanitary authority: s 4 (repealed). These were the authorities having jurisdiction in the urban and rural sanitary districts into which England, excluding the metropolis, was divided: s 5 (repealed). As to the subsequent development of local government organisation see **LOCAL GOVERNMENT** vol 69 (2009) PARA 3 et seq; **LONDON GOVERNMENT**. 'Profit' means some benefit more than, and independent of, the mere removal of sewage or liquid, although such benefit need not be of a pecuniary nature: *Acton Local Board v Batten* (1884) 28 ChD 283; *Pinnock v Waterworth* (1887) 3 TLR 563; *Bonella v Twickenham Local Board of Health*, *Holmes v Twickenham Local Board of Health* (1887) 20 QBD 63, CA; *Ferrand v Hallas Land and Building Co* [1893] 2 QB 135, CA; *Russell v Knight and M'Donald* (1894) Times, 9 May. Sewers merely constructed as part of the development of a

building estate are not made for profit (*Vowles v Colmer* (1895) 64 LJ Ch 414; *Southstrand Estate Development Co Ltd v East Preston RDC* [1934] Ch 254), even if a charge is made for connecting drains (*Vowles v Colmer* above; *Solihull RDC v Ford* (1931) 30 LGR 483), but if they were made by a person (other than the person developing an estate) with a view to making charges for the user they are made for profit (*Southstrand Estate Development Co Ltd v East Preston RDC* above). The question is one of fact: *Southstrand Estate Development Co Ltd v East Preston RDC*. Where sewers were made by a landowner for draining a town the greater part of which stood on his land, and rate was levied upon all persons connecting their drains to the sewers, the sewers were made for profit (*Minehead Local Board v Luttrell* [1894] 2 Ch 178); and so was a sewer made in a private road with the object of raising contributions from persons making connections with it, and obtaining an enhanced value for the owner when taken over by the local authority (*Vare v Joy* (1920) 124 LT 148). Sewers are made for profit if they are to convey water for cattle (*Croysdale v Sunbury-on-Thames UDC* [1898] 2 Ch 515), or to facilitate quarrying (*Sykes v Sowerby Urban Council* [1900] 1 QB 584, CA), or if they are made to increase the value of land for manufacturing purposes (*West Riding of Yorkshire Rivers Board v Linthwaite Urban Council (No 2)* (1915) 84 LJKB 1610, DC) or agricultural purposes (*Phillimore v Watford RDC* [1913] 2 Ch 434).

- 166 (2) All combined drains constructed before 1 October 1937 which, by virtue of the Public Health Act 1875, would, immediately before that date, have been vested in the local authority as sewers but for the provisions of some enactment or statutory scheme relating to the construction of combined drains, or of an order made under such an enactment or scheme: Public Health Act 1936 s 20(1)(a) (as originally enacted). The Public Health Acts Amendment Act 1890 s 19 (repealed) did not prevent the vesting of a sewer in a local authority: see *Pemsel and Wilson v Tucker* [1907] 2 Ch 191; and PARA 998 note 12.
- 167 (3) All combined drains constructed by a local authority at its expense before 1 April 1974 (ie the date on which the Public Health Act 1936 s 20 was substituted by the Water Act 1973 s 40(2), Sch 8 para 33: see s 39(1)), or acquired by it before that date, except those constructed by it after 1 October 1937 for the purpose only of draining property belonging to it which had not been declared to be public sewers: Public Health Act 1936 s 20(1)(b), (2) proviso (as originally enacted). Power to purchase or otherwise acquire sewers was given to local authorities by the Public Health Act 1875 s 14 (repealed). Any reference in the Public Health Act 1936 Pt II (ss 14-90) to the construction of a sewer was to be construed as including a reference to the extension of an existing sewer: s 90(5) (repealed). 'Acquired' embraced all forms of acquisition open to a local authority, including acquisition by operation of the maxim 'quidquid plantatur solo, solo credit', and is not limited to acquisition by agreement: *Royco Homes Ltd v Eatonwill Construction Ltd* [1979] Ch 276, [1978] 2 All ER 821 (where the sewer was laid in highway land belonging to the authority).
- 168 (4) All sewers constructed before 1 April 1974 under any enactment relating to the sewerage of private streets to the satisfaction of the council which carried that enactment into execution, except any such sewer which by virtue of the statutory provisions relating to county roads (ie the Highways, Streets and Bridges Act 1959 s 227 (repealed): see now the Highways Act 1980 s 264; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 226, 821) vested in the county council: Public Health Act 1936 s 20(1)(c) (as originally enacted).
- 169 (5) All sewers with respect to which a declaration of vesting (see PARA 1004) had taken effect before 1 April 1974: s 20(1)(d) (as originally enacted).

2 le by the Public Health Act 1936 s 20 (as originally enacted). Section 20 was repealed by the Water Act 1989 Sch 8 para 2(5), Sch 27 Pt I. Prior to local government reorganisation in 1974, 'local authority', for the purposes of the Public Health Act 1936, meant the council of a borough, urban district or rural district: s 1(2) (as originally enacted).

3 As to the former water authorities see **WATER AND WATERWAYS** vol 100 (2009) PARAS 108, 134.

4 le by virtue of the Local Government Act 1972 s 68 or s 254 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 16, 88), as either provision applies for the purposes of the Water Act 1973 (largely repealed).

5 See **WATER AND WATERWAYS** vol 100 (2009) PARA 108.

6 See PARA 999; and **WATER AND WATERWAYS** vol 100 (2009) PARA 137 et seq.

7 These comprised, in addition to the sewers which vested in a water authority by virtue of the Local Government Act 1972 (see note 1), the following categories of sewers: (1) all sewers constructed by the water authority at its expense, or vested in the authority in pursuance of arrangements under the Water Act 1973 s

15 (now repealed with savings), or otherwise acquired by the authority; (2) all sewers constructed under the Highways Act 1980 Pt XI (ss 203-237) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 146 et seq), except sewers belonging to a road maintained by a highway authority; and (3) all sewers with respect to which a declaration of vesting (ie under the Public Health Act 1936 s 17 (now repealed)) had taken effect: Public Health Act 1936 s 20(1) (substituted by the Water Act 1973 Sch 8 para 33; and amended by the Highways Act 1980 Sch 24 para 4(a)). As to the repeal of the Public Health Act 1936 s 20 see note 2. As to roads maintained by highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 64 et seq. As to declarations of vesting see PARA 1004; and as to the effect of vesting see PARA 1002.

8 See the Water Act 1989 s 4; and the Water Authorities (Transfer of Functions) (Appointed Day) Order 1989, SI 1989/1530. See also **WATER AND WATERWAYS** vol 100 (2009) PARA 108.

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1002. Effect of vesting.

The effect of the vesting of a sewer¹ in a sewerage undertaker² is to confer on the undertaker, so far as is requisite to enable it to control and maintain the sewer, an absolute property in the sewer and the space which it occupies³ together with a right of access⁴; but the property is subject to any prescriptive rights to use the sewer⁵. Where the sewerage undertaker acquires the land in or upon which its works lie, it obtains rights of support by virtue of common law⁶. Where, however, the sewer lies in land belonging to other persons, the undertaker does not obtain a common law right of support⁷; instead, a right of subjacent support for the sewer is implied by statute⁸.

1 As to the meaning of 'sewer' see PARA 998.

2 As to sewerage undertakers see PARA 999.

3 *Taylor v Oldham Corpn* (1876) 4 ChD 395; *Bradford v Eastbourne Corpn* [1896] 2 QB 205 at 211, DC, per Lord Russell CJ; *Ystradyfodwg and Pontypridd Main Sewerage Board v Bensted (Surveyor of Taxes)* [1906] 1 KB 294 (affd [1907] 1 KB 490, CA; [1907] AC 264, HL); *Pemsel and Wilson v Tucker* [1907] 2 Ch 191; *Port of London Authority v Canvey Island Comrs* [1932] 1 Ch 446, CA; *Newcastle-under-Lyme Corpn v Wolstanton Ltd* [1947] Ch 427, [1947] 1 All ER 218, CA. The interest in the sewer which is thus vested appears to be a legal estate in fee simple determinable when the pipe or conduit ceases to be a sewer, and, for the purposes of the Law of Property Act 1925, a fee simple absolute by virtue of s 7(1) (see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91): *Tithe Redemption Commission v Runcorn UDC* [1954] Ch 383, [1954] 1 All ER 653, CA. See also *Birkenhead Corpn v London and North Western Rly Co* (1885) 15 QBD 572, CA. No interest in the soil surrounding the sewer vests in the undertaker: *Newcastle-under-Lyme Corpn v Wolstanton Ltd* above. The vesting of a sewer constructed on private land is also a compulsory acquisition of land for the purposes of the Land Compensation Act 1961 s 39(1): see *Taylor v North West Water Ltd* [1995] RVR 83. Sewers are exempted from rating: see the Local Government Finance Act 1988 s 51, Sch 5 para 13; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 50.

4 See *Pemsel and Wilson v Tucker* [1907] 2 Ch 191.

5 *A-G v Dorking Union Guardians* (1882) 20 ChD 595, CA; *R v Staines Local Board* (1888) 60 LT 261, DC; *Ogilvie v Blything Union Rural Sanitary Authority* (1891) 65 LT 388 (affd (1892) 67 LT 18, CA). The sewerage undertaker has power to alter the drainage system of any premises communicating with a public sewer or cesspool: see the Water Industry Act 1991 s 113; and PARA 1081.

6 *Jary v Barnsley Corpn* [1907] 2 Ch 600. As to rights to support see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 180 et seq.

7 *Newcastle-under-Lyme Corpn v Wolstanton Ltd* [1947] Ch 427, [1947] 1 All ER 218, CA; *Re National Coal Board's Application* [1960] Ch 192, [1959] 3 All ER 58.

8 This right is implied where, and only where, compensation is provided for (as it is by the Public Health Act 1936 s 278) (see PARA 121) in respect of the burden thrown upon the landowner: *Metropolitan Board of Works v Metropolitan Rly Co* (1869) LR 4 CP 192, Ex Ch; *Re Dudley Corpn* (1881) 8 QBD 86, CA; *Normanton Gas Co v Pope and Pearson Ltd* (1883) 52 LJQB 629, CA; *London and North Western Rly Co v Evans* [1893] 1 Ch 16, CA; *Jary v Barnsley Corpn* [1907] 2 Ch 600. It is not certain whether there is implied a right of lateral support: see *Metropolitan Board of Works v Metropolitan Rly Co* above (explained by Jessel MR in *Roderick v Aston Local Board* (1877) 5 ChD 328 at 333, CA); *Re Dudley Corpn* above; *Jary v Barnsley Corpn* above at 613 per Parker J. As to compensation see also the Water Industry Act 1991 s 180, Sch 12; and PARA 1030.

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1003. Vesting of new public sewers.

Provision is made for the vesting of new public sewers in sewerage undertakers¹. Every relevant pipe² which has been laid³ by a sewerage undertaker⁴ and every sewage disposal works constructed by a sewerage undertaker⁵ vests in the undertaker which laid the pipe or, as the case may be, the undertaker which constructed the works⁶. In addition, the following also vest in such an undertaker: (1) every sewer, lateral drain or sewage disposal works with respect to which a declaration of vesting made by that undertaker⁷ takes effect⁸; and (2) every sewer which is laid in the area of that undertaker under the statutory provisions relating to making up private streets⁹ and is not a sewer belonging to a road maintained by a highway authority¹⁰.

1 As to sewerage undertakers see PARA 999.

2 For these purposes, 'relevant pipe', in relation to a sewerage undertaker, means any sewer, lateral drain or disposal main: Water Industry Act 1991 s 179(7)(b). Subject to s 219(2) (see PARA 998), 'disposal main' means any outfall pipe or other pipe which: (1) is a pipe for the conveyance of effluent to or from any sewage disposal works, whether of a sewerage undertaker or of any other person; and (2) is not a public sewer: s 219(1). 'Effluent' means any liquid, including particles of matter and other substances in suspension in the liquid: s 219(1). 'Lateral drain' means: (a) that part of a drain which runs from the curtilage of a building (or buildings or yards within the same curtilage) to the sewer with which the drain communicates or is to communicate; or (b) (if different and the context so requires) the part of a drain identified in a declaration of vesting made under s 102 (see PARA 1004) or in an agreement made under s 104 (see PARA 1006): s 219(1) (definition added by the Water Act 2003 s 97(1), (9)(a)). As to the meaning of 'sewer' see PARA 998. As to the meaning of 'drain' see PARA 998. As to the meanings of 'pipe' and 'sewage disposal works' see PARA 998. As to sewage disposal see PARA 1069 et seq.

3 Ie in exercise of any power conferred by the Water Industry Act 1991 Pt VI (ss 155-192) or otherwise. As to the power to lay pipes see ss 158, 159; and **WATER AND WATERWAYS** vol 101 (2009) PARA 462 et seq. As to the meaning of 'laying of a pipe' see PARA 998.

4 Water Industry Act 1991 s 179(1)(a). See note 5.

5 Water Industry Act 1991 s 179(1)(b). Section 179(1) is subject to s 179(1A) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 464) and to s 179(3) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 464): see s 179(1) (amended by the Water Act 2003 Sch 8 paras 2, 41(1), (2)). See also the Water Industry Act 1991 s 179(2A); and **WATER AND WATERWAYS** vol 101 (2009) PARA 464.

6 Water Industry Act 1991 s 179(1).

7 Ie under the Water Industry Act 1991 Pt IV Ch II (ss 98-117).

8 Water Industry Act 1991 s 179(2)(a) (amended by the Water Act 2003 s 97(1), (7)(a)).

9 Ie under the Highways Act 1980 Pt XI (ss 203-237): see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 146 et seq.

10 Water Industry Act 1991 s 179(2)(b). 'Highway authority' has the same meaning as in the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 49 et seq): Water Industry Act 1991 s 219(1).

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1004. Adoption of sewers and disposal works.

A sewerage undertaker¹ may at any time declare that any sewer² which is situated within its area³ or which serves the whole or any part of that area⁴, any lateral drain⁵ which communicates or is to communicate with a public sewer which is so situated or serves the whole or any part of that area and is vested in that undertaker⁶, or any sewage disposal works⁷ which are so situated or which serve the whole or any part of that area⁸, is or are to become vested in it as from such a date as may be specified in the declaration⁹. However, such a declaration may not be made in respect of any sewer or works the construction¹⁰ of which was completed before 1 October 1937¹¹. A sewerage undertaker which proposes to make such a declaration must: (1) give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question¹²; and (2) take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged¹³ or, as the case may be, until any appeal so lodged has been determined¹⁴. The owner or any of the owners of any sewer, lateral drain or sewage disposal works with respect to which a sewerage undertaker might make a declaration may make an application to that undertaker requesting it to make a declaration with respect to the sewer, lateral drain or works¹⁵. Any person who immediately before the making of a declaration under these provisions was entitled to use the sewer or lateral drain in question is entitled to use it, or any sewer or lateral drain substituted for it, to the same extent as if the declaration had not been made¹⁶.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'sewer' see PARA 998. A declaration or application under the Water Industry Act 1991 s 102 may be made with respect to part only of a sewer: s 102(3). A declaration may also be made in respect of a length of sewer which has been sealed off as being unnecessary. The test is whether it has been constructed for the drainage of buildings, not whether it is actually so used: *Blackdown Properties Ltd v Ministry of Housing and Local Government* [1967] Ch 115, [1965] 2 All ER 345.

3 As to the areas of sewerage undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 138.

4 Water Industry Act 1991 s 102(1)(a) (amended by the Water Act 2003 Sch 9 Pt 3). A sewerage undertaker must carry out its functions under the Water Industry Act 1991 s 102 so as not to create a nuisance: s 117(6). Nothing in s 102 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). 'Functions', in relation to a sewerage undertaker, means the functions of the undertaker under or by virtue of any enactment; and is to be construed subject to s 217 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 133): s 219(1). 'Contravention' includes a failure to comply; and cognate expressions are to be construed accordingly: s 219(1). 'Watercourse' includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except mains and other pipes which belong to the Environment Agency or a water undertaker or are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises: s 219(1) (definition amended by the Environment Act 1995 Sch 22 para 125). As to the meaning of 'drain' see PARA 998. As to the meaning of 'public sewer' see PARA 1000. As to the Environment Agency see PARA 68 et seq. As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq. As to the possible difference between a watercourse and a sewer see *Raglan Housing Association Ltd v Southampton City Council* [2007] EWCA Civ 785, [2008] 2 All ER 44; and PARA 998 note 4.

The Secretary of State has power by regulations to provide for schemes for the adoption by sewerage undertakers of sewers, lateral drains and sewage disposal works of the descriptions set out in the Water Industry Act 1991 s 102(1)(a), s 102(1)(aa), and s 102(1)(b): see ss 105A, 105B, 105C (added by the Water Act

2003 s 98); and see further below. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

The Secretary of State may by regulations provide for him to make schemes for the adoption by sewerage undertakers of sewers, lateral drains and sewage disposal works of the descriptions set out in the Water Industry Act 1991 s 102(1)(a), s 102(1)(aa), and s 102(1)(b): s 105A(1) (as so added). The regulations may require sewerage undertakers to prepare draft schemes and to submit them to the Secretary of State: s 105A(2) (as so added). Each scheme must relate to the area of a sewerage undertaker, or part or parts of it; or the areas of more than one sewerage undertaker, or part or parts of them: s 105A(3) (as so added). It is the duty of a sewerage undertaker, in specified circumstances, to exercise its powers under s 102 with a view to making the declaration referred to in s 102(1) in relation to sewers, lateral drains or sewage disposal works which fall within the area to which a scheme relates; and satisfy specified criteria: s 105A(4) (as so added). The circumstances and the criteria must each be specified in the regulations; or determined in accordance with the regulations and specified in the scheme: s 105A(5) (as so added). In relation to the exercise of those powers pursuant to that duty certain provisions have effect with appropriate modifications: see s 105A(6) (as so added). A duty imposed on a sewerage undertaker under s 105A(4) (see above) is enforceable by the Secretary of State under s 18 (see PARA 1010): s 105A(7) (as so added). A statutory instrument containing regulations under s 105A(1) (see above) must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: s 105A(8) (as so added).

Any person falling within s 105B(2) (see below) may appeal to the Water Services Regulation Authority if he is aggrieved by (a) the proposal of a sewerage undertaker to make a declaration under s 102 in relation to a sewer, lateral drain or sewage disposal works, pursuant to the undertaker's duty to do so under s 105A(4) (see above) (the 'relevant duty'); or (b) the failure of a sewerage undertaker to make such a proposal pursuant to that duty: s 105B(1) (as so added). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq; and see also the Authority's enforcement policy which appears on the relevant website which was, at the date at which this volume states the law, www.ofwat.gov.uk. In particular as to the Authority's duty not to impose or maintain unnecessary regulatory burdens see the Regulatory Enforcement and Sanctions Act 2008 ss 72, 73; and **WATER AND WATERWAYS** vol 100 (2009) PARA 110. The persons referred to are an owner of a sewer, lateral drain or sewage disposal works; any other person affected by the proposal, or the failure, in question: Water Industry Act 1991 s 105B(2) (as so added). The grounds upon which a person may appeal are in a s 105B(1)(a) case (see head (a) above), that the relevant duty is not owed in relation to the sewer, lateral drain or sewage disposal works, or that the making of the proposed declaration would be seriously detrimental to him; in a s 105B(1)(b) case (see head (b) above), that the relevant duty is owed in relation to the sewer, lateral drain or sewage disposal works; or any other prescribed ground: s 105B(3) (as so added). An appeal under s 105B(1)(a) (see head (a) above) must be made within two months after notice of the proposal is served on the owner of the sewer, lateral drain or sewage disposal works; or published in accordance with s 102(4) as modified by s 105A(6) (see above), or, if both occur, within two months after whichever is the later: s 105B(4) (as so added). An appeal under s 105B(1)(b) (see head (b) above) must be made within such period as is specified in the scheme (not being less than two months): s 105B(5) (as so added). On the hearing of an appeal under s 105B(1), the Authority may in a s 105(1)(a) case, allow or disallow the proposal of the sewerage undertaker; or in a s 105B(1)(b) case, determine that the undertaker was not under the relevant duty in relation to the sewer, lateral drain or sewage disposal works in question, or, in either case, make any declaration that the sewerage undertaker might have made, unless the proposal is disallowed: s 105B(6) (as so added). If, in a s 105B(1)(a) case, the Authority finds that the making of the proposed declaration would be seriously detrimental to the appellant, it must disregard any duty on the part of the sewerage undertaker to make the proposal for the purpose of determining whether to allow or disallow the proposal: s 105B(7) (as so added). If, in a s 105B(1)(a) case, the Authority disallows the proposal of the sewerage undertaker, the scheme pursuant to which it was made has effect as if there were no duty under s 105A(4) (see above) on the sewerage undertaker in relation to the sewer, lateral drain or sewage disposal works in question: s 105B(8) (as so added). Where the Authority makes a declaration under s 105B(6) (see above), it may, if it thinks fit specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and direct that its declaration not take effect unless any conditions so specified are accepted: s 105B(9) (as so added). A declaration made under s 105B(6) has the same effect as if it had been made by the undertaker: s 105B(10) (as so added). The Secretary of State may by regulations make further provision in connection with appeals under s 105B: s 105B(11) (as so added). The regulations may, in particular, require the Authority to have regard to prescribed matters when determining an appeal under s 105B: s 105B(12) (as so added).

The Secretary of State may vary any scheme, or revoke it: s 105C(1) (as so added). Before making regulations or any scheme under s 105A (see above), and before amending or revoking the regulations or varying or revoking a scheme, the Secretary of State must consult (i) each sewerage undertaker which would be affected; (ii) the Authority; (iii) the Consumer Council for Water; (iv) such other persons as the Secretary of State considers appropriate: s 105C(2) (as so added). The Secretary of State must publish each scheme he makes, and any such scheme as varied, in the way he considers best for the purpose of bringing it to the attention of those likely to be affected by it: s 105C(3) (as so added). As to the Consumer Council for Water see **WATER AND WATERWAYS** vol 100 (2009) PARA 115 et seq.

At the date at which this volume states the law no regulations had been made under ss 105A-105C.

5 As to the meaning of 'lateral drain' see PARA 1003 note 2.

6 Water Industry Act 1991 s 102(1)(aa) (added by the Water Act 2003 s 96(1)(a)). See note 4.

7 As to the meaning of 'sewage disposal works' see PARA 998. As to sewage disposal see PARA 1069 et seq.

8 Water Industry Act 1991 s 102(1)(b). See note 4.

9 Water Industry Act 1991 s 102(1). In deciding whether to make a declaration, the sewerage undertaker must have regard to all the circumstances of the case and in particular to the following considerations: (1) whether the sewer or works in question is or are adapted to or required for any general system of sewerage or sewage disposal which the undertaker has provided or proposes to provide for the whole or any part of its area; (2) whether the sewer or lateral drain is constructed under a highway or under land reserved by a planning scheme for a street; (3) the number of buildings which the sewer or lateral drain is intended to serve and whether, having regard to the proximity of other buildings, or the prospect of future development, it is likely to be required to serve additional buildings; (4) the method of construction and state of repair of the sewer, lateral drain or works; and (5) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him: s 102(5) (amended by the Water Act 2003 s 96(1)(d)). The statutory considerations, however, are not paramount and can be outweighed by all the circumstances of the case: *R v Secretary of State for Wales* [1987] JPL 711. 'Street' means the whole or any part of any of the following, irrespective of whether it is a thoroughfare:

170 (a) any highway, road, lane, footway, alley or passage;

171 (b) any square or court; and

172 (c) any land laid out as a way whether it is for the time being formed as a way or not,

and where a street passes over a bridge or through a tunnel, references to a street include that bridge or tunnel: see the New Roads and Street Works Act 1991 s 48(1); and the Water Industry Act 1991 s 219(1). 'Owner', in relation to any premises, means the person who is for the time being receiving the rackrent of the premises, whether on his own account or as agent or trustee for another person, or who would receive the rackrent if the premises were let at a rackrent; and cognate expressions must be construed accordingly: s 219(1). 'Highway' has the same meaning as in the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 7): Water Industry Act 1991 s 219(1).

Where a sewerage undertaker is about to take into consideration the question of making a declaration under s 102 with respect to: (i) any sewer which is situated within the area of another sewerage undertaker or which, though situated within its own area, serves the whole or any part of the area of another sewerage undertaker; (ii) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or (iii) any sewage disposal works which are situated within the area of another sewerage undertaker or which, though situated within its own area, serve the whole or any part of the area of another sewerage undertaker, it must give notice to the other undertaker: s 103(1) (amended by the Water Act 2003 s 96(2)(a)). Where a sewerage undertaker is required to give such notice to another undertaker, no declaration under the Water Industry Act 1991 s 102 is to be made by the former undertaker until the other undertaker has consented to the declaration or the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose: s 103(2). As to the meaning of 'notice' see PARA 1037 note 2.

Where: (A) a sewer (or part of a sewer) or a lateral drain is vested, or any sewage disposal works are vested, in a relevant body; and (B) in the case of a sewer, part of a sewer, lateral drain or works vested in railway undertakers or dock undertakers, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to those undertakers and held or used by them for the purposes of their undertaking, a sewerage undertaker must not make a declaration under s 102 with respect to the sewer, or part of it, or the lateral drain or the works (as the case may be), except on the application of the relevant body concerned: s 103(3) (substituted by the Water Act 2003 s 96(2)(b)). 'Relevant body' means any sewerage undertaker, any local authority or county council or any railway undertakers or dock undertakers: Water Industry Act 1991 s 103(5). As to the meaning of 'local authority' see PARA 99. 'Dock undertakers' means persons authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on any dock, harbour, canal or inland navigation: ss 117(1), 184(4). 'Railway undertakers' means the British Railways Board, Transport for London or any subsidiary (within the meaning of the Greater London Authority Act 1999: see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 287) of Transport for London, or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on any railway: Water Industry Act 1991 s 219(1) (definition amended by SI 2003/1615). Functions, rights and liabilities of the British Railways Board were transferred to the Strategic Rail Authority which has been abolished and its functions transferred: see the Railways Act 2005 Pt 1 (ss 1-5); and the Railways (Abolition of the Strategic Rail Authority) Order 2006, SI 2006/2925. As to railway undertakers see generally **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 326.

Where a sewerage undertaker makes a declaration under the Water Industry Act 1991 s 102 with respect to a sewer or lateral drain which is situated within the area of another sewerage undertaker or with respect to any sewage disposal works which are so situated, it must give notice of the fact to that other undertaker: s 103(4) (amended by the Water Act 2003 s 96(2)(c)).

10 References in the Water Industry Act 1991 Pt IV Ch II to the construction of a sewer or of any sewage disposal works include references to the extension of any existing sewer or works: s 117(2).

11 Water Industry Act 1991 s 102(7). The date referred to in the text is the date of commencement of the Public Health Act 1936.

12 Water Industry Act 1991 s 102(4)(a) (amended by the Water Act 2003 s 96(1)(c)).

13 Ie under the Water Industry Act 1991 s 105: see PARAS 1005, 1007.

14 Water Industry Act 1991 s 102(4)(b).

15 Water Industry Act 1991 s 102(2) (amended by the Water Act 2003 s 96(1)(b)).

16 Water Industry Act 1991 s 102(6) (amended by the Water Act 2003 s 96(1)(e)).

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1005. Appeals in relation to adoption.

An owner¹ of any sewer², lateral drain³ or sewage disposal works⁴ may appeal to the Water Services Regulation Authority⁵ if: (1) he is aggrieved by the proposal of a sewerage undertaker to make a declaration as to the adoption of any sewer or sewage disposal works⁶; or (2) he is aggrieved by the refusal of a sewerage undertaker to make such a declaration⁷.

On the hearing of any such appeal, the Authority may allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made⁸. Any such declaration has the same effect as if it had been made by the undertaker in question⁹. Where the Authority makes such a declaration, it may if it thinks fit specify conditions, including conditions as to the payment of compensation by the sewerage undertaker, and direct that its declaration is not to take effect unless any conditions so specified are accepted¹⁰.

1 As to the meaning of 'owner' see PARA 1004 note 9.

2 As to the meaning of 'sewer' see PARA 998.

3 As to the meaning of 'lateral drain' see PARA 1003 note 2.

4 As to the meaning of 'sewage disposal works' see PARA 998.

5 Water Industry Act 1991 s 105(1) (amended by the Competition and Service (Utilities) Act 1992 s 35; and the Water Act 2003 ss 36(2), 96(5)(a)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq; and in particular as to the Authority's duty not to impose or maintain unnecessary regulatory burdens see the Regulatory Enforcement and Sanctions Act 2008 ss 72, 73; and **WATER AND WATERWAYS** vol 100 (2009) PARA 110.

A sewerage undertaker must carry out its functions under the Water Industry Act 1991 s 105 so as not to create a nuisance: s 117(6). Nothing in s 105 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'functions' see PARA 1004 note 4. As to the meaning of 'drain' see PARA 998; and as to the meaning of 'public sewer' see PARA 1000. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4. As to sewerage undertakers see PARA 999.

6 Water Industry Act 1991 s 105(1)(a). The declaration referred to in the text is a declaration under s 102: see PARA 1004. The time for the making of an appeal under s 105(1)(a) by the owner of any sewer, lateral drain or sewage disposal works is any time within two months after notice of the proposal is served on that owner: s 105(3)(a) (s 105(3) amended by the Water Act 2003 s 96(5)(b)). As to the meaning of 'notice' see PARA 1037 note 2.

7 Water Industry Act 1991 s 105(1)(b). The time for the making of an appeal under s 105(1)(b) by the owner of any sewer, lateral drain or sewage disposal works is any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration: s 105(3)(b) (as amended: see note 6).

8 Water Industry Act 1991 s 105(4)(a) (s 105(4) amended by the Competition and Service (Utilities) Act 1992 s 35; and the Water Act 2003 s 36(2)). The Authority, in deciding, on an appeal under the Water Industry Act 1991 s 105, whether any declaration ought to be made, must have regard to all the circumstances of the case

and, in particular, to the considerations specified in s 102(5) (see PARA 1004): s 105(7) (amended by the Competition and Service (Utilities) Act 1992 s 35; and the Water Act 2003 s 36(2)).

9 Water Industry Act 1991 s 105(4) (as amended: see note 8).

10 Water Industry Act 1991 s 105(5) (amended by the Competition and Service (Utilities) Act 1992 s 35; and the Water Act 2003 s 36(2)).

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1006. Agreement for adoption of future sewer.

A sewerage undertaker¹ may agree with: (1) any person constructing or proposing to construct any sewer², any drain³ intended to communicate with a public sewer vested in that undertaker⁴, or any sewage disposal works⁵; or (2) any person at whose expense the undertaker is, by virtue of an agreement⁶, to carry out work in connection with the construction of such a drain or sewer⁷, that, if the sewer, drain or sewage disposal works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon the completion of the work, or at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain⁸ or works (as the case may be) to be vested in that undertaker⁹. Any such agreement is enforceable against the undertaker by the owner¹⁰ or occupier for the time being of any premises served by the sewer, lateral drain or works to which it relates¹¹.

A person mentioned in head (1) or head (2) above may make an application to a sewerage undertaker requesting the undertaker to make such an agreement¹². Any such application must be accompanied and supplemented by all such information¹³ as the undertaker may reasonably require; but a failure to provide information in pursuance of the obligation to supplement such an application does not invalidate the application¹⁴. Where: (a) a person who has made such an application to a sewerage undertaker has failed to comply with his obligation to supplement that application with information required by the undertaker¹⁵; and (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required¹⁶ to respond to the application as gave that person a reasonable opportunity to provide the required information within that period¹⁷, the undertaker may delay its response to the application until a reasonable time after the required information is provided¹⁸.

A sewerage undertaker must not make an agreement with respect to: (i) a sewer, drain or sewage disposal works situated within the area of another sewerage undertaker¹⁹; or (ii) a drain which is intended to communicate with a sewer which is so situated or is vested in another sewerage undertaker, until one of the following conditions is satisfied²⁰. The conditions are: (A) that the other undertaker has consented to the making of the agreement²¹; or (B) that the Secretary of State²², on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose²³.

1 As to sewerage undertakers see PARA 999.

2 Water Industry Act 1991 s 104(1)(a)(i) (s 104(1) substituted by the Water Act 2003 s 96(4)(a)). As to the meaning of 'sewer' see PARA 998.

3 As to the meaning of 'drain' see PARA 998.

4 Water Industry Act 1991 s 104(1)(a)(ii) (as substituted: see note 2).

5 Water Industry Act 1991 s 104(1)(a)(iii) (as substituted: see note 2). As to the meaning of 'sewage disposal works' see PARA 998.

6 I.e. by virtue of an agreement under the Water Industry Act 1991 s 160: see PARA 1025.

7 Water Industry Act 1991 s 104(1)(b) (as substituted: see note 2).

8 As to the meaning of 'lateral drain' see PARA 1003 note 2.

9 Water Industry Act 1991 s 104(1) (as substituted: see note 2). This provision is subject to s 104(7) (see the text and notes 19-23) and s 146(3) (see PARA 1039; and **WATER AND WATERWAYS** vol 100 (2009) PARA 420): see s 104(1) (as so substituted).

A sewerage undertaker must carry out its functions under s 104 so as not to create a nuisance: s 117(6). Nothing in s 104 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'functions' see PARA 1004 note 4. As to the meaning of 'public sewer' see PARA 1000. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4.

10 As to the meaning of 'owner' see PARA 1004 note 9.

11 Water Industry Act 1991 s 104(5) (amended by the Water Act 2003 s 96(4)(c)).

Without limiting the terms which may be included in an agreement under the Water Industry Act 1991 s 104, the terms of an agreement which relates to a drain may include in particular: (1) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain; (2) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement; (3) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and (4) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement: s 104(6A) (added by the Water Act 2003 s 96(4)(e)).

12 Water Industry Act 1991 s 104(2) (amended by the Water Act 2003 s 96(4)(b)).

13 'Information' includes anything contained in any records, accounts, estimates or returns: Water Industry Act 1991 s 219(1).

14 Water Industry Act 1991 s 104(3). This provision is expressed to be without prejudice to the effect (if any) of any other contravention of the requirements of s 104 in relation to such an application: see s 104(3).

15 Water Industry Act 1991 s 104(4)(a).

16 Ie by virtue of the Water Industry Act 1991 s 105: see PARAS 1005, 1007.

17 Water Industry Act 1991 s 104(4)(b).

18 Water Industry Act 1991 s 104(4).

19 Water Industry Act 1991 s 104(7)(a) (s 104(7) substituted by the Water Act 2003 s 96(4)(f)). As to the areas of sewerage undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 138.

20 Water Industry Act 1991 s 104(7)(b) (as substituted: see note 19).

21 Water Industry Act 1991 s 104(8)(a) (s 104(8) added by the Water Act 2003 s 96(4)(f)).

22 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

23 Water Industry Act 1991 s 104(8)(b) (as added: see note 21).

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1007. Appeal in relation to agreement for adoption.

A person constructing or proposing to construct a drain¹ or sewer² or any sewage disposal works³ may appeal to the Water Services Regulation Authority⁴ where a sewerage undertaker⁵: (1) has refused an application requesting an agreement by the undertaker to adopt a sewer⁶; (2) has offered to grant such an application on terms to which that person objects⁷; or (3) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice⁸ to the applicant of the terms on which it is prepared to grant the application⁹.

On the hearing of any such appeal, the Authority may uphold the refusal of the undertaker to grant the application or to modify the terms offered, or, on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application¹⁰. Where the Authority makes such an agreement on behalf of a sewerage undertaker, it may do so on such terms as it considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as it considers appropriate for ensuring that the terms of the agreement are reasonable¹¹.

1 As to the meaning of 'drain' see PARA 998.

2 As to the meaning of 'sewer' see PARA 998.

3 As to the meaning of 'sewage disposal works' see PARA 998. As to the meaning of 'construction of a sewer or of any sewage disposal works' see PARA 1004 note 10.

4 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq; and in particular as to the Authority's duty not to impose or maintain unnecessary regulatory burdens see the Regulatory Enforcement and Sanctions Act 2008 ss 72, 73; and **WATER AND WATERWAYS** vol 100 (2009) PARA 110.

5 Water Industry Act 1991 s 105(2) (amended by the Competition and Service (Utilities) Act 1992 s 35; and the Water Act 2003 s 36(2)). The Water Industry Act 1991 s 105(2) is subject to s 104(4) (see PARA 1006): s 105(2) (as so amended). As to sewerage undertakers see PARA 999.

A sewerage undertaker must carry out its functions under s 105 so as not to create a nuisance: s 117(6). Nothing in s 105 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'functions' see PARA 1004 note 4. As to the meaning of 'public sewer' see PARA 1000. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4.

6 Water Industry Act 1991 s 105(2)(a). The agreement referred to in the text is an agreement under s 104 (see PARA 1006): see s 105(2)(a).

7 Water Industry Act 1991 s 105(2)(b).

8 As to the meaning of 'notice' see PARA 1037 note 2.

9 Water Industry Act 1991 s 105(2)(c).

10 Water Industry Act 1991 s 105(4)(b) (amended by the Competition and Service (Utilities) Act 1992 s 35; and the Water Act 2003 s 36(2)). The Authority, in deciding, on an appeal under the Water Industry Act 1991 s

105, whether any agreement ought to be made, must have regard to all the circumstances of the case and, in particular, to the considerations specified in s 102(5) (see PARA 1004): s 105(7) (amended by the Competition and Service (Utilities) Act 1992 s 35; and the Water Act 2003 s 36(2)). For the purposes of the Water Industry Act 1991 s 105(7), in its application in relation to an appeal under s 105(2) (see the text and notes 5-9), the provisions of s 102(5)(a)-(e) (see PARA 1004) have effect with the necessary modifications: s 105(7) (as so amended). 'Modifications' includes additions, alterations, and omissions; and cognate expressions are to be construed accordingly: s 219(1).

11 Water Industry Act 1991 s 105(6) (amended by the Competition and Service (Utilities) Act 1992 s 35; and the Water Act 2003 s 36(2)).

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1008. Determination of disputes with respect to cross-boundary sewers.

Where any part of a sewer¹ is vested in a sewerage undertaker² by virtue of the provisions relating to the allocation of cross-boundary sewers³, the terms on which that part of that sewer: (1) communicates with such parts of that sewer or of any other sewer⁴; or (2) discharges into any such sewage disposal works⁵, as immediately before 1 September 1989⁶ were vested in the same water authority as that part of that sewer but are vested in another sewerage undertaker⁷ may be determined, in default of agreement, by the Water Services Regulation Authority⁸. Such a determination by the Authority has effect as an agreement between the sewerage undertakers in question but may be varied or revoked by a subsequent determination made by the Authority on the application of either of those undertakers, as well as by agreement between the undertakers⁹. In making such a determination, the Authority must have regard to the desirability of a sewerage undertaker's recovering the costs resulting from its allowing the sewers of other sewerage undertakers to communicate with its sewers or to discharge into its sewage disposal works and of its securing a reasonable return on its capital¹⁰.

1 As to the meaning of 'sewer' see PARA 998.

2 As to sewerage undertakers see PARA 999.

3 I.e. under the Water Act 1989 s 70 (amended by the Water Consolidation (Consequential Provisions) Act 1991 Sch 3 Pt I). The Water Act 1989 s 70 relates to the allocation of sewers to the relevant water authority for the purposes of any scheme under Sch 2: see **WATER AND WATERWAYS** vol 100 (2009) PARA 108.

4 Water Industry Act 1991 s 110(1)(a).

5 Water Industry Act 1991 s 110(1)(b). As to the meaning of 'sewage disposal works' see PARA 998.

6 I.e. the transfer date for the purposes of the Water Act 1989 s 4(1) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 108): Water Authorities (Transfer of Functions) (Appointed Day) Order 1989, SI 1989/1530, arts 1, 2.

7 I.e. by virtue of the Water Act 1989 s 70: see note 3.

8 Water Industry Act 1991 s 110(1) (s 110(1)-(3) amended by the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

9 Water Industry Act 1991 s 110(2) (as amended: see note 8).

10 Water Industry Act 1991 s 110(3) (as amended: see note 8).

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1009. Maps and records of public sewers.

It is the duty of every sewerage undertaker¹ to keep records² of the location and other relevant particulars³: (1) of every public sewer⁴, lateral drain⁵ or disposal main which is vested in the undertaker⁶; (2) of every sewer or lateral drain in relation to which a declaration of vesting has been made by the undertaker⁷ but has not taken effect⁸; and (3) of every drain or sewer which is the subject of any agreement to make such a declaration which has been entered into by the undertaker⁹. Any such information¹⁰ which is required to be made available by a sewerage undertaker for inspection by the public must be made available in the form of a map¹¹.

It is also the duty of every sewerage undertaker to secure that the contents of all the records for the time being kept by it are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker¹². The records kept by a sewerage undertaker are to be kept separately in relation to the area of each local authority¹³ within whose area there is any drain, sewer or disposal main of which that undertaker is required to keep records and to whom the undertaker is required to provide copies of the contents of those records¹⁴.

For the purpose of determining whether any failure to make a modification of any records so kept constitutes a breach of the duty imposed¹⁵, that duty is taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary; and, where the records are modified, the date of the modification and of the completion of the works making the modification necessary is to be incorporated in the records¹⁶.

1 As to sewerage undertakers see PARA 999. The duties of a sewerage undertaker are enforceable under the Water Industry Act 1991 s 18 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 163) by the Secretary of State: s 199(9). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 'Records' includes computer records and any other records kept otherwise than in a document: Water Industry Act 1991 s 219(1).

3 Water Industry Act 1991 s 199(1). For the purposes of s 199, the relevant particulars of a drain, sewer or disposal main are (in addition to its location) particulars: (1) of whether it is a drain, sewer or disposal main and of the descriptions of effluent for the conveyance of which it is or is to be used; and (2) of whether it is vested in the undertaker or, if it is not, of whether it is a sewer in relation to which a declaration has been made under Pt IV Ch II (ss 98-117) or a drain or sewer which is the subject of an agreement under s 104 (see PARA 1006): s 199(2). As to the meanings of 'sewer' and 'drain' see PARA 998. As to the meanings of 'disposal main' and 'effluent' see PARA 1003 note 2.

Section 199(1) is expressed to be subject to s 199(6) (see the text and note 16) and s 199(8): see s 199(1).

Nothing in s 199 requires a sewerage undertaker to keep records of any particulars of a drain, sewer or disposal main laid before 1 September 1989 if: (a) the undertaker does not know of, or have reasonable grounds for suspecting, the existence of the drain, sewer or disposal main; or (b) it is not reasonably practicable for the undertaker to discover the course of the drain, sewer or disposal main and it has not done so: s 199(7). Nothing in s 199 required a sewerage undertaker, at any time before 1 September 1999, to keep records of any particulars of any such drain, sewer or disposal main laid before 1 September 1989 as would not be excluded from its records by virtue of s 199(7) unless: (i) those particulars were shown on 31 August 1989 on a map kept by a local authority under the Public Health Act 1936 s 32 (repealed); or (ii) it is a drain or sewer in relation to which a declaration of vesting, or an agreement to make such a declaration, has been made since 31 August 1989: s 199(8).

4 As to the meaning of 'public sewer' see PARA 1000.

- 5 As to the meaning of 'lateral drain' see PARA 1003 note 2.
- 6 Water Industry Act 1991 s 199(1)(a) (amended by the Water Act 2003 s 97(1), (8)(a)).
- 7 le under the Water Industry Act 2003 Pt IV Ch II.
- 8 Water Industry Act 1991 s 199(1)(b) (amended by the Water Act 2003 s 97(1), (8)(b)).
- 9 Water Industry Act 1991 s 199(1)(c). The agreement referred to in the text is an agreement under s 104 (see PARA 1006): see s 199(1)(c).
- 10 As to the meaning of 'information' see PARA 1006 note 13.
- 11 Water Industry Act 1991 s 199(5).
- 12 Water Industry Act 1991 s 199(4).
- 13 As to the meaning of 'local authority' see PARA 99.
- 14 Water Industry Act 1991 s 199(3). The requirement to provide copies is the requirement under s 200: see s 199(3). It is the duty of every sewerage undertaker so to provide local authorities, free of charge, with copies of the contents of records kept under s 199 and copies of any modifications of those records, as to ensure that every local authority to whose area any of those records relate is at all times informed of the contents for the time being of the records relating to its area: s 200(1). A local authority must secure that so much of any such information provided to it as consists in the contents for the time being of records kept by a sewerage undertaker under s 199 is available, at all reasonable times, for inspection by the public free of charge at an office of the authority: s 200(2). Any information which is required under s 200 to be provided to a local authority or to be made available by a local authority for inspection by the public must be so provided or made available in the form of a map: s 200(3). The duties of a sewerage undertaker under s 200 are enforceable under s 18 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 163) by the Secretary of State: s 200(4). As to the meaning of 'modification' see PARA 1007 note 10.
- 15 le imposed under the Water Industry Act 1991 s 199(1): see the text and notes 1-9.
- 16 Water Industry Act 1991 s 199(6).

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(ii) Provision of Public Sewers

1010. Duty to provide sewerage system.

It is the duty of every sewerage undertaker¹: (1) to provide, improve and extend such a system of public sewers² (whether inside its area³ or elsewhere) and so to cleanse and maintain those sewers and any lateral drains⁴ which belong to or vest in the undertaker as to ensure that that area is and continues to be effectually drained⁵; and (2) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) for effectually dealing, by means of sewage disposal works⁶ or otherwise, with the contents of those sewers⁷. Such a duty is enforceable⁸ by the Secretary of State⁹ or, with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Water Services Regulation Authority¹⁰. It is also the duty of a sewerage undertaker in performing its duty mentioned above to have regard to its existing and likely future obligations to allow for the discharge of trade effluent¹¹ into its public sewers and to the need to provide for the disposal of trade effluent which is so discharged¹².

1 Water Industry Act 1991 s 94(1). As to sewerage undertakers see PARA 999.

2 As to the meaning of 'public sewer' see PARA 1000.

3 As to the areas of sewerage undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 138.

4 As to the meaning of 'lateral drain' see PARA 1003 note 2.

5 Water Industry Act 1991 s 94(1)(a) (amended by the Water Act 2003 s 97(1), (3)). If independently of this provision the undertaker creates a nuisance it may be liable: see PARA 1069. It has been held that an obligation to repair a sewer does not involve reconstruction of a sewer originally defective: *R v Epsom Union Guardians* (1863) 2 New Rep 62. The duty does not extend to the maintenance of areas of land outside the sewer: see *Radstock Co-operative and Industrial Society Ltd v Norton-Radstock UDC* [1968] Ch 605, [1968] 2 All ER 59, CA. As to the right of access see *Mayor of Birkenhead Corp v London and North Western Ry Co* (1885) 15 QBD 572, CA; *Goodhart v Hyett* (1883) 25 ChD 182; *Abingdon Corp v James* [1940] Ch 287, [1940] 1 All ER 446 (mandatory injunction to pull down houses); cf *Thurrock Grays and Tilbury Joint Sewerage Board v EJ and W Goldsmith Ltd* (1914) 79 JP 17.

6 As to the meaning of 'sewage disposal works' see PARA 998.

7 Water Industry Act 1991 s 94(1)(b). The sewerage undertaker is not bound to provide a sewer for every house in its area, eg for outlying cottages: *Kinson Pottery Co v Poole Corp* [1899] 2 QB 41 at 49, DC, per Channell J (decided under earlier legislation). See *Dobson v Thames Water Utilities Ltd* [2007] EWHC 2021 (TCC), [2008] 2 All ER 362 (contents of sewer, causing odour and mosquitoes, not effectively dealt with; claims in negligence (but not in nuisance) would be allowed because they are not inconsistent with the Water Industry Act 1991 s 94(1)(b)); reversed on appeal on different grounds: [2009] EWCA Civ 28, [2009] 3 All ER 319; see **DAMAGES** vol 12(1) (Reissue) PARA 873. For the power of sewerage undertakers to charge for the provision of services see the Water Industry Act 1991 Pt V (ss 142-154); PARAS 1038-1039; and **WATER AND WATERWAYS** vol 100 (2009) PARA 419 et seq. The expenses of sewerage private streets may be put upon the frontagers: see the Highways Act 1980 Pt XI (ss 203-237); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 146 et seq.

8 le under the Water Industry Act 1991 s 18: see note 10; and **WATER AND WATERWAYS** vol 100 (2009) PARA 163.

9 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

10 Water Industry Act 1991 s 94(3) (amended by the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

The obligations imposed on a sewerage undertaker by the Water Industry Act 1991 Pt IV Chs II-III (ss 98-141), and the remedies available in respect of contraventions of those obligations, are in addition to any duty imposed or remedy available by virtue of any provision of s 94 or s 95 and are not in any way qualified by any such provision: s 94(4).

Cases decided under predecessor provisions are superseded by the new enforcement procedure provided by s 18: see **WATER AND WATERWAYS** vol 100 (2009) PARA 163. Where any act or omission constitutes a contravention of a condition of an appointment under Pt II Ch I (ss 6-17) or of a condition of a licence under Pt II Ch 1A (ss 17A-17R) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 152 et seq) or of a statutory or other requirement enforceable under s 18, or causes or contributes to a contravention of any such condition or requirement, the only remedies for, or for causing or contributing to, that contravention (apart from those available by virtue of s 18), are those for which express provision is made by or under any enactment and those that are available in respect of that act or omission otherwise than by virtue of its constituting, or causing or contributing to, such a contravention: s 18(8) (substituted by the Water Act 2003 Sch 8 paras 2, 4(1), (7)). See *Dear v Thames Water* (1993) 33 Con LR 43, where the equivalent provision in the Water Act 1989 was held to preclude an action in nuisance in respect of matters falling within the enforcement procedure. See also *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66, [2004] 2 AC 42, [2004] 1 All ER 135 (the common law of nuisance does not impose obligations on a statutory sewerage undertaker inconsistent with the statutory scheme); and **WATER AND WATERWAYS** vol 100 (2009) PARA 163; **WATER AND WATERWAYS** vol 101 (2009) PARA 670. See further *Ministry of Defence v Thames Water Utilities Ltd* [2006] EWCA Civ 1620, [2006] All ER (D) 391 (Nov)).

11 For these purposes, 'trade effluent' has the same meaning as in the Water Industry Act 1991 Pt IV Ch III (ss 118-144) (see PARA 1047 note 3): s 94(5).

As from a day to be appointed, s 94(5) is amended so as to provide that s 139 (see PARA 1047) is to have effect for the purposes of s 94 as it has effect for the purposes of Pt IV Ch III: s 94(5) (prospectively amended by the Water Act 2003 s 88(2)). At the date at which this volume states the law no such day had been appointed.

12 Water Industry Act 1991 s 94(2).

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1011. Factors to be considered in carrying out sewerage functions and enforcement.

In carrying out its functions, a sewerage undertaker¹ must exercise any power so as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna, and geological or physiographical features of special interest². It must also have regard to the desirability of protecting buildings, sites and objects of archaeological, architectural or historic interest and take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or any such flora, fauna, features, buildings, sites or objects³. It is further required to have regard to the desirability of preserving for the public, and maintaining the availability to the public of, any freedom of access to places of natural beauty, and buildings and sites of archaeological, architectural or historic interest, and to take into account any effect the proposals would have on such access⁴. There is also a duty to take into account the needs of the chronically sick or disabled⁵. These duties are enforceable by the Secretary of State⁶ by a system of enforcement orders⁷. There are provisions for procedure for enforcement orders, including notifying the undertaker and any other persons likely to be affected by an order and considering any representations before confirming, finalising or revoking an order⁸. The undertaker may challenge the order on legal grounds in the High Court and the High Court may quash the order or any provisions of it⁹. Breach of an enforcement order is actionable at the suit of any person who sustains loss or damage as a result¹⁰, although it is a defence for the undertaker to show that it took all reasonable steps and exercised due diligence to avoid contravention¹¹. The order is separately enforceable by the relevant enforcement authority by injunction or other relief¹².

1 As to sewerage undertakers see PARA 999.

2 See the Water Industry Act 1991 s 3(2)(a); and **WATER AND WATERWAYS** vol 101 (2009) PARA 676.

3 See the Water Industry Act 1991 s 3(2); and **WATER AND WATERWAYS** vol 101 (2009) PARA 676.

4 See the Water Industry Act 1991s 3(3); and **WATER AND WATERWAYS** vol 101 (2009) PARA 676.

5 See the Water Industry Act 1991 s 3(6); and **WATER AND WATERWAYS** vol 101 (2009) PARA 676.

6 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

7 See the Water Industry Act 1991 s 3(7); and **WATER AND WATERWAYS** vol 101 (2009) PARA 676. As to enforcement orders see ss 18-22; and **WATER AND WATERWAYS** vol 100 (2009) PARA 163 et seq. As to financial penalties see ss 22A-22F; and **WATER AND WATERWAYS** vol 100 (2009) PARA 170 et seq.

8 See the Water Industry Act 1991 s 20; and **WATER AND WATERWAYS** vol 100 (2009) PARA 165 et seq.

9 See the Water Industry Act 1991 s 21; and **WATER AND WATERWAYS** vol 100 (2009) PARA 167.

10 See the Water Industry Act 1991 s 22(2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 168.

11 See the Water Industry Act 1991 s 22(3); and **WATER AND WATERWAYS** vol 100 (2009) PARA 168. As to the meaning of 'contravention' see PARA 1004 note 4.

12 See the Water Industry Act 1991 s 22(4); and **WATER AND WATERWAYS** vol 100 (2009) PARA 168.

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1012. Special administration orders.

The Secretary of State¹ or, with his consent, the Water Services Regulation Authority² may apply to the High Court in relation to any company holding an appointment as a sewerage undertaker³ and the court may make a special administration order⁴ on one or more of the following grounds⁵:

- 2225 (1) that there has been, is or is likely to be such a contravention⁶ by the company of any principal duty⁷, as is serious enough to make it inappropriate for the company to continue to hold its appointment⁸;
- 2226 (2) that there has been or is likely to be such a contravention of an enforcement order⁹ as is serious enough to make it inappropriate for the company to continue to hold its appointment¹⁰;
- 2227 (3) that the company is or is likely to be unable to pay its debts¹¹;
- 2228 (4) that, in a case where the Secretary of State has certified that it would be appropriate for him to petition for the winding up of the company¹², it would be just and equitable for the company to be wound up if it did not hold an appointment¹³;
- or
- 2229 (5) that the company is unable or unwilling adequately to participate in arrangements certified by the Secretary of State or the Authority to be necessary by reason of, or in connection with, a proposal for any appointment or variation replacing a company as a sewerage undertaker¹⁴.

The court must not make a winding up order or an administration order in relation to a company holding an appointment as a sewerage undertaker, and there are restrictions on the ability to enforce any security over the company's property¹⁵.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

3 As to sewerage undertakers see PARA 999.

4 I.e. a special administration order under the Water Industry Act 1991 s 23(1): see **WATER AND WATERWAYS** vol 100 (2009) PARA 173.

5 See the Water Industry Act 1991 s 24(1), (2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 174. Certain procedural provisions of the Insolvency Act 1986 apply to proceedings under the Water Industry Act 1991 s 24: see s 24(4), (5).

6 As to the meaning of 'contravention' see PARA 1004 note 4.

7 'Principal duty' in this context means the general duty to provide a sewerage system under the Water Industry Act 1991 s 94 (see PARA 625): s 24(7)(a) (s 24(7) substituted by the Water Act 2003 Sch 8 paras 2, 9(1), (4)).

8 See the Water Industry Act 1991 s 24(2)(a); and **WATER AND WATERWAYS** vol 100 (2009) PARA 174. This ground does not apply to a contravention in relation to which the Secretary of State has notified the company that he does not consider it necessary to serve an enforcement order (ie under s 19(3): see **WATER AND WATERWAYS** vol 100 (2009) PARA 164): see s 24(2)(a); and **WATER AND WATERWAYS** vol 100 (2009) PARA 174.

9 As to enforcement orders see **WATER AND WATERWAYS** vol 100 (2009) PARA 163 et seq.

10 See the Water Industry Act 1991 s 24(2)(b); and **WATER AND WATERWAYS** vol 100 (2009) PARA 174. This ground does not apply to a contravention which is subject to challenge under s 21(1) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 167), or a provisional enforcement order which has been confirmed: see s 24(2)(b); and **WATER AND WATERWAYS** vol 100 (2009) PARA 174.

11 See the Water Industry Act 1991 s 24(2)(c); and **WATER AND WATERWAYS** vol 100 (2009) PARA 174. 'Unable to pay its debts' has the meanings ascribed to it by the Insolvency Act 1986 ss 123, 221 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARAS 435, 446): see the Water Industry Act 1991 s 24(6).

12 See under the Insolvency Act 1986 s 124A: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 444.

13 See the Water Industry Act 1991 s 24(2)(d); and **WATER AND WATERWAYS** vol 100 (2009) PARA 174. The reference in the text is a reference to holding an appointment under Pt II Ch I (ss 6-17).

14 See the Water Industry Act 1991 s 24(2)(e); and **WATER AND WATERWAYS** vol 100 (2009) PARA 174. The appointment or variation referred to in the text is an appointment or variation under s 7(4)(c): see **WATER AND WATERWAYS** vol 100 (2009) PARA 138.

15 See the Water Industry Act 1991 s 26(1); and **WATER AND WATERWAYS** vol 100 (2009) PARA 175.

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1013. Performance of sewerage undertaker's functions by local authorities etc.

A relevant authority¹ may, in accordance with any arrangements which it has entered into for the purpose with any sewerage undertaker², carry out sewerage functions³ on that undertaker's behalf in relation to such area comprising the whole or any part of that authority's relevant area⁴, together (where that authority is a local authority or an urban development corporation and the arrangements so provide) with parts of any adjacent relevant areas of other relevant authorities, as may be specified in the arrangements⁵. Arrangements entered into for such purposes may contain any such provision as may be agreed between the relevant authority and the sewerage undertaker but do not affect the availability to any person, other than the relevant authority, of any remedy against the undertaker in respect of the carrying out of the undertaker's sewerage functions or of any failure to carry them out⁶. Where any such arrangements so provide, a relevant authority is entitled to exercise on behalf of a sewerage undertaker any power which by or under any enactment⁷ is exercisable by the undertaker for the purposes of, or in connection with, the carrying out of the undertaker's sewerage functions⁸.

Where such arrangements provide for a local authority to carry out the sewerage functions of a sewerage undertaker on the undertaker's behalf, the provision relating to the delegation of functions⁹, so far as it relates to the carrying out of functions by a committee, sub-committee or officer of a local authority, has effect in relation to those sewerage functions only in so far as the arrangements do not otherwise provide¹⁰.

1 'Relevant authority' means any of the following: (1) a local authority; (2) the new towns residuary body or a development corporation for a new town; (3) the urban development corporation for any urban development area: Water Industry Act 1991 s 97(5) (definition amended by the Government of Wales Act 1998 Sch 15 para 17(b); and the Housing and Regeneration Act 2008 Sch 8 paras 55, 57(b)). 'New towns residuary body' means (a) in relation to a new town in England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in the Housing and Regeneration Act 2008 s 52(1)(a) or (b) (see **TOWN AND COUNTRY PLANNING**) (and references to the 'English new towns residuary body' are to be read accordingly); and (b) in relation to a new town in Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in the New Towns Act 1981 s 36(1)(a)(i) or (ii) (see **TOWN AND COUNTRY PLANNING**) (and references to the 'Welsh new towns residuary body' are to be read accordingly): Water Industry Act 1991 s 219(1) (definition added by the Housing and Regeneration Act 2008 Sch 8 paras 55, 59). 'New town' has the same meaning as in the New Towns Act 1981 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1315): Water Industry Act 1991 s 97(5). 'Urban development area' means any area so designated under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1426 et seq): Water Industry Act 1991 s 97(5). As to the meaning of 'local authority' see PARA 99.

2 As to sewerage undertakers see PARA 999.

3 'Sewerage functions', in relation to a sewerage undertaker, means any of the functions of the undertaker by virtue of its appointment under the Water Industry Act 1991 Pt II Ch I (ss 6-17) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 et seq) as a sewerage undertaker, other than its functions relating to sewage disposal and its functions by virtue of Pt IV Ch III (ss 118-141) (see PARA 1047 et seq): s 97(5).

4 'Relevant area': (1) in relation to a local authority, means the area of the authority and the whole of any new town or urban development area any part of which is situated within the area of the authority; (2) in relation to the English new towns residuary body, means any new town in England; (3) in relation to the Welsh new towns residuary body, means any new town in Wales; (4) in relation to the development corporation for any new town, means that new town; and (5) in relation to any urban development corporation for any urban development area, means that area: Water Industry Act 1991 s 97(5) (definition amended by the Government

of Wales Act 1998 Sch 15 para 17(a), Sch 18 Pt IV; and the Housing and Regeneration Act 2008 Sch 8 paras 55, 57(a)).

5 Water Industry Act 1991 s 97(1).

6 Water Industry Act 1991 s 97(2). For the effect of agency arrangements on liability of a sewerage undertaker in negligence see *King v Harrow London Borough Council* (1994) 39 Con LR 21.

7 'Enactment' includes an enactment contained in the Water Industry Act 1991 or in any Act passed after it: s 219(1).

8 Water Industry Act 1991 s 97(3).

9 le the Local Government Act 1972 s 101: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 370.

10 Water Industry Act 1991 s 97(4).

Where arrangements entered into for the purposes of s 97 provide for a local authority which is operating executive arrangements to carry out the sewerage functions of a sewerage undertaker on that undertaker's behalf: (1) those sewerage functions are treated as functions of the authority for the purposes of the Local Government Act 2000 s 13 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 324); and (2) if or to the extent that those sewerage functions are the responsibility of the executive of that authority: (a) the Water Industry Act 1991 s 97(4) does not apply; and (b) the Local Government Act 2000 ss 14-16 and any regulations made under ss 17-20 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 357 et seq) apply in relation to those sewerage functions only in so far as the arrangements do not provide otherwise: Water Industry Act 1991 s 97(4A) (added by SI 2001/2237; and SI 2002/808). 'Executive' and 'executive arrangements' have the same meanings as in the Local Government Act 2000 Pt II (ss 10-48) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 303); Water Industry Act 1991 s 97(5) (definitions added by SI 2001/2237; and SI 2002/808).

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1014. Standards of performance in connection with provision of sewerage services.

For the purpose: (1) of facilitating the determination of the extent to which breaches of certain obligations¹ are to amount to breaches of the general duty to provide a sewerage system²; or (2) of supplementing that duty by establishing overall standards of performance in relation to the provision of sewerage services by any sewerage undertaker³, the Secretary of State⁴ may by regulations⁵ provide for contraventions⁶ of such requirements as may be prescribed⁷ to be treated for the purposes of the Water Industry Act 1991 as breaches of that duty⁸.

The Secretary of State may also by regulations prescribe such standards of performance in connection with the provision of sewerage services⁹ as, in his opinion, ought to be achieved in individual cases¹⁰. Such regulations may provide that, if a sewerage undertaker fails to meet a prescribed standard, it must pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description¹¹. The regulations may¹²:

- 2230 (a) include in a standard of performance a requirement for a sewerage undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations¹³;
- 2231 (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Water Services Regulation Authority¹⁴;
- 2232 (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed¹⁵;
- 2233 (d) prescribe circumstances in which a sewerage undertaker is to be exempted from requirements of the regulations¹⁶.

Where the Authority determines any dispute in accordance with regulations made under these provisions it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute¹⁷.

1 The obligations imposed by virtue of the Water Industry Act 1991 ss 95A-141.

2 Water Industry Act 1991 s 95(1)(a). The duty to provide a sewerage system is the duty under s 94 (see PARA 1010): see s 95(1)(a).

3 Water Industry Act 1991 s 95(1)(b). As to sewerage undertakers see PARA 999.

4 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

5 As to the procedure for making regulations see the Water Industry Act 1991 s 96; and PARA 1015. As to regulations made under s 95(2)-(4) see the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, SI 2008/594, which set out the service standards that must be met by sewerage undertakers and provide for payments to be made to customers for failure to meet the prescribed standards. The 2008 Regulations revoke the previous Water Supply and Sewerage Services (Customer Service Standards) Regulations 1989, SI 1989/1159 (amended by SI 1989/1383, SI 1993/500, SI 1996/3065, SI 2000/2301) and provide a consolidated text, in revised language, of the revoked Regulations, but extend the rights of customers to payments for flooding of customers' land or property by sewer overflowing. In addition, the standards of performance to be met and the payments to be made by undertakers whose areas are wholly or mainly in England have also been applied to undertakers whose areas are wholly or mainly in Wales (formerly there were

different standards of performance for, and payments by, undertakers whose areas are wholly or mainly in Wales). As to exclusions see the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, SI 2008/594, reg 5; as to keeping of appointments see reg 6; as to complaints, account queries and requests about payment arrangements see reg 7; as to notice of interruption of supply see reg 8; as to entitlement to payment or credit where supply not restored as promised see reg 9; as to pressure standard see reg 10; as to flooding from sewers see regs 11, 12; as to timing of payments see reg 13; as to means of payment see reg 14; as to payments not affecting other legal liabilities see reg 15; as to notice of rights to be given to customers see reg 16; and as to reference of disputes to the Authority see reg 17.

6 As to the meaning of 'contravention' see PARA 1004 note 4.

7 'Prescribed' means prescribed by regulations: Water Industry Act 1991 s 219(1). See note 5.

8 Water Industry Act 1991 s 95(1).

It is the duty of the Consumer Council for Water to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to complaints made by consumers about any matter relating to the activities of sewerage undertakers and the handling of such complaints: s 95B(1) (s 95B added by the Water Act 2003 s 45(2)). For these purposes, 'complaints' includes complaints made directly to sewerage undertakers (or anyone carrying on activities on their behalf) and complaints to the Water Services Regulation Authority, the Consumer Council for Water, the Welsh Ministers or the Secretary of State: Water Industry Act 1991 s 95B(2) (as so added). As to the Consumer Council for Water see **WATER AND WATERWAYS** vol 100 (2009) PARA 115 et seq. As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

9 'Sewerage services' includes the disposal of sewage and any other services which are required to be provided by a sewerage undertaker for the purpose of carrying out its functions: Water Industry Act 1991 s 219(1). As to the meaning of 'functions' see PARA 1004 note 4.

10 Water Industry Act 1991 s 95(2). See note 5.

11 Water Industry Act 1991 s 95(3). See note 5.

12 Water Industry Act 1991 s 95(4). See note 5.

13 Water Industry Act 1991 s 95(4)(a). See note 5.

14 Water Industry Act 1991 s 95(4)(b) (amended by the Water Act 2003 s 36(2)). See note 5.

15 Water Industry Act 1991 s 95(4)(c) (amended by the Water Act 2003 s 36(2)). See note 5.

16 Water Industry Act 1991 s 95(4)(d). See note 5.

17 Water Industry Act 1991 s 95(5) (added by the Competition and Service (Utilities) Act 1992 Sch 1 para 24; and amended by the Water Act 2003 s 36(2)). See note 5.

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1015. Procedure for making regulations prescribing standards of performance.

The Secretary of State¹ may make regulations² on an application by the Water Services Regulation Authority³, in accordance with heads (1) to (3) below⁴, or otherwise than on such an application, in accordance with heads (A) and (B) below⁵.

Where the Authority has made to the Secretary of State a written application⁶, the Secretary of State may make such regulations⁷ if:

- 2234 (1) he is satisfied that a copy of the application has been served by the Water Services Regulation Authority⁸: (a) on every sewerage undertaker specified in the application⁹; (b) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations¹⁰; (c) on the Consumer Council for Water¹¹; and (d) on such other persons or bodies as the Secretary of State may consider appropriate¹²;
- 2235 (2) such period as the Secretary of State considers appropriate has been allowed for the making¹³: (a) by the Authority¹⁴; and (b) by any affected sewerage undertaker or person or body on whom a copy of the application has been served¹⁵, of representations or objections with respect to the Authority's proposals and any modifications¹⁶ proposed by the Secretary of State¹⁷; and
- 2236 (3) the Secretary of State has considered the written summary of results of research¹⁸, the Authority's reasons for its proposals, and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn¹⁹.

The Secretary of State must not make any regulations prescribing standards of performance²⁰, on an application by the Authority²¹, except where: (i) the only provisions of the regulations are those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority's application or to those proposals with such modifications as the Secretary of State considers appropriate²²; and (ii) each of the modifications (if any) of the Authority's proposals to which effect is given by the regulations is a modification the proposal to make which has been notified to the Authority, to any sewerage undertaker appearing to the Secretary of State to be likely to be affected by the modifications and to any person or body on whom a copy of the Authority's application was served²³.

Where no such application²⁴ has been made, the Secretary of State may make such regulations²⁵ only if he considers: (A) that the regulations will contribute towards the attainment of policies relating to public health or the environment²⁶; or (B) where he does not consider that they will so contribute, that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made²⁷.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 I.e regulations under the Water Industry Act 1991 s 95: see PARA 1014.

3 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

4 le in accordance with the Water Industry Act 1991 s 96(1)-(3).

5 le in accordance with the Water Industry Act 1991 s 96(4)-(8): see s 96(A1) (added by the Water Act 2003 s 42(1), (2)).

6 le complying with the Water Industry Act 1991 s 96(2). Before making an application to the Secretary of State, the Authority must arrange for such research as it considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results: s 96(1A) (added by the Competition and Service (Utilities) Act 1992 s 30(1), (3); and amended by the Water Act 2003 s 36(2)).

An application made by the Authority to the Secretary of State complies with the Water Industry Act 1991 s 96(2) if it: (1) sets out the Authority's proposals for the making of regulations under s 95 (see PARA 1014) (s 96(2)(a) (amended by the Water Act 2003 s 42(1), (4)(a))); (2) specifies the sewerage undertaker or undertakers in relation to which it is proposed the regulations should apply (Water Industry Act 1991 s 96(2)(b) (amended by the Water Act 2003 s 42(1), (4)(b))); (3) is accompanied by a written summary of the results of the research carried out in accordance with the Water Industry Act 1991 s 96(1A) (s 96(2)(bb) (added by the Competition and Service (Utilities) Act 1992 ss 30(1), (4))); and (4) summarises the Authority's reasons for its proposals (Water Industry Act 1991 s 96(2)(c) (amended by the Water Act 1993 s 36(2))). As to sewerage undertakers see PARA 999.

7 Water Industry Act 1991 s 96(1) (substituted by the Water Act 2003 s 42(1), (3)(a)).

8 See note 6.

9 Water Industry Act 1991 s 96(1)(b)(i) (s 96(1)(b) substituted by the Competition and Service (Utilities) Act 1992 s 30(1), (2), Sch 1 para 25; and the Water Industry Act 1991 s 96(1)(b)(i) amended by the Water Act 2003 ss 36(2), 42(1), (3)(b), Sch 9 Pt 2).

10 Water Industry Act 1991 s 96(1)(b)(ii) (as substituted: see note 9).

11 Water Industry Act 1991 s 96(1)(b)(iii) (s 96(1)(b)(iii), (iv) added by the Water Act 2003 s 42(1), (3)(b)). As to the Consumer Council for Water see **WATER AND WATERWAYS** vol 100 (2009) PARA 115 et seq.

12 Water Industry Act 1991 s 96(1)(b)(iv) (as added: see note 11).

13 Water Industry Act 1991 s 96(1)(c).

14 Water Industry Act 1991 s 96(1)(c)(i) (amended by the Water Act 2003 s 36(2)).

15 Water Industry Act 1991 s 96(1)(c)(ii) (amended by the Competition and Service (Utilities) Act 1992 Sch 1 para 25). The reference in the text is a reference to service of a copy of the application under the Water Industry Act 1991 s 96(1)(b) (see the text and notes 9-12): see s 96(1)(c)(ii) (as so amended).

16 As to the meaning of 'modifications' see PARA 1007 note 10.

17 Water Industry Act 1991 s 96(1)(c) (amended by the Water Act 2003 s 36(2)).

18 le the written summary under the Water Industry Act 1991 s 96(2)(bb): see note 6.

19 Water Industry Act 1991 s 96(1)(d) (amended by the Competition and Service (Utilities) Act 1992 Sch 1 para 25; and the Water Act 2003 s 36(2)).

20 le regulations under the Water Industry Act 1991 s 95: see PARA 1014.

21 Water Industry Act 1991 s 96(3) (amended by the Water Act 2003 ss 36(2), 42(1), (5)(a)).

22 Water Industry Act 1991 s 96(3)(a) (amended by the Water Act 2003 ss 36(2), 42(1), (5)(b)).

23 Water Industry Act 1991 s 96(3)(b) (amended by the Water Act 2003 ss 36(2), 42(1), (5)(c)). The reference in the text is a reference to service under the Water Industry Act 1991 s 96(1)(b): see the text and notes 9-12.

24 le as is mentioned in the Water Industry Act 1991 s 96(1): see heads (1)-(3) in the text.

25 le regulations under the Water Industry Act 1991 s 95: see PARA 1014.

26 Water Industry Act 1991 s 96(4)(a) (s 96(4)-(8) added by the Water Act 2003 s 42(1), (6)).

Before making regulations under the Water Industry Act 1991 s 95 (see PARA 1014) by virtue of s 96(4), the Secretary of State must: (1) give notice of his proposals; (2) consider the results of the research carried out in accordance with s 96(7); and (3) consider every representation or objection with respect to the proposals which has been duly made and not withdrawn: s 96(5) (as so added). A notice under head (1) above must: (a) summarise the Secretary of State's reasons for his proposals; (b) specify the sewerage undertaker or undertakers in relation to which it is proposed the regulations should apply; and (c) specify the period within which objections or representations with respect to the proposals may be made: s 96(6) (as so added). Before giving notice under head (1) above, the Secretary of State must arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected: s 96(7) (as so added). Such a notice must be given by serving a copy on: (i) the Authority; (ii) the Consumer Council for Water; (iii) every sewerage undertaker to which the regulations will apply; (iv) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations; and (iv) such other persons or bodies as the Secretary of State may consider appropriate: s 96(8) (as so added).

27 Water Industry Act 1991 s 96(4)(b) (as added: see note 26). See note 26.

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1016. Information with regard to performance.

The Water Services Regulation Authority¹ must from time to time collect information² with respect to the compensation paid³ by sewerage undertakers⁴, and the levels of overall performance achieved by sewerage undertakers in connection with the provision of sewerage services⁵.

At such times as the Authority may direct, each sewerage undertaker must give the following information to the Authority⁶: (1) as respects each prescribed standard of performance⁷, the number of cases in which compensation was paid and the aggregate amount or value of that compensation⁸; and (2) as respects each overall standard of performance that is established⁹, such information with respect to the level of performance achieved by the undertaker as may be specified¹⁰. A sewerage undertaker who without reasonable excuse fails to do anything required of it under these provisions is liable on summary conviction to a penalty¹¹.

The Authority must, at least once in every year, arrange for the publication, in such form and in such manner as it considers appropriate, of such of the information collected by or given to it as may appear to it expedient to give to customers or potential customers¹² of sewerage undertakers¹³. In arranging for the publication of any such information, the Authority must have regard to the need for excluding, so far as practicable¹⁴: (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual¹⁵; and (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that body¹⁶.

Each sewerage undertaker must, in such form and manner and with such frequency as the Authority may direct, take steps to inform its customers¹⁷ of: (i) the standards of overall performance¹⁸ which are applicable to that undertaker¹⁹; and (ii) that undertaker's level of performance as respects each of those standards²⁰. In giving any such direction, the Authority must not specify a frequency of less than once in every period of 12 months²¹.

1 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

2 As to the meaning of 'information' see PARA 1006 note 13.

3 Ie under regulations under the Water Industry Act 1991 s 95(2): see PARA 1014.

4 As to sewerage undertakers see PARA 999.

5 Water Industry Act 1991 s 95A(1) (s 95A added by the Competition and Service (Utilities) Act 1992 s 31; and amended by the Water Act 2003 s 36(2)). As to the meaning of 'sewerage services' see PARA 1014 note 9.

6 Water Industry Act 1991 s 95A(2) (as added (see note 5); and amended by the Water Act 2003 s 36(2)).

7 Ie each standard prescribed by regulations under the Water Industry Act 1991 s 95(2): see PARA 1014.

8 Water Industry Act 1991 s 95A(2)(a) (as added: see note 5).

9 Ie established by regulations under the Water Industry Act 1991 s 95(1)(b): see PARA 1014.

10 Water Industry Act 1991 s 95A(2)(b) (as added: see note 5).

11 Water Industry Act 1991 s 95A(3) (as added: see note 5). The penalty is a fine not exceeding level 5 on the standard scale: s 95A(3) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

12 'Customer or potential customer' in relation to a company holding an appointment under the Water Industry Act 1991 Pt II Ch I (ss 6-17) means: (1) any person for or to whom that company provides any services in the course of carrying out the functions of a water undertaker or sewerage undertaker (other than a licensed water supplier); or (2) any person who might become such a person on making an application for the purpose to the company: s 219(1) (definition amended by the Water Act 2003 Sch 8 paras 2, 50(1), (2)(a)). As to the meaning of 'functions' see PARA 1004 note 4.

13 Water Industry Act 1991 s 95A(4) (as added (see note 5); and amended by the Water Act 2003 s 36(2)).

14 Water Industry Act 1991 s 95A(5) (as added (see note 5); and amended by the Water Act 2003 s 36(2)).

15 Water Industry Act 1991 s 95A(5)(a) (as added (see note 5); and amended by the Water Act 2003 s 36(2)).

16 Water Industry Act 1991 s 95A(5)(b) (as added (see note 5); and amended by the Water Act 2003 s 36(2)).

17 Water Industry Act 1991 s 96A(1) (s 96A added by the Competition and Service (Utilities) Act 1992 s 32; and amended by the Water Act 2003 s 36(2)). The duty of a sewerage undertaker to comply with the Water Industry Act 1991 s 96A is enforceable by the Authority under s 18 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 163): s 96A(3) (as so added and amended).

18 le established under the Water Industry Act 1991 s 95(1)(b): see PARA 1014.

19 Water Industry Act 1991 s 96A(1)(a) (as added and amended: see note 17).

20 Water Industry Act 1991 s 96A(1)(b) (as added and amended: see note 17).

21 Water Industry Act 1991 s 96A(2) (as added and amended: see note 17).

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1017. Procedure for dealing with complaints.

Each sewerage undertaker¹ must establish a procedure for dealing with complaints made by its customers or potential customers² in connection with the provision of sewerage services³. No such procedure is to be established, and no modification⁴ of such a procedure is to be made, unless the sewerage undertaker has consulted the regional committee to which it has been allocated, and the proposed procedure or modification has been approved by the Water Services Regulation Authority⁵.

The sewerage undertaker must publicise the procedure in such manner as may be approved by the Authority and send a description of the procedure, free of charge, to any person who asks for one⁶. The Authority may give a direction to a sewerage undertaker requiring the undertaker to review its procedure or the manner in which the procedure operates⁷. Such a direction⁸: (1) may specify the manner in which the review is to be conducted⁹; and (2) must require a written report of the review to be made to the Authority¹⁰. Where the Authority receives such a report it may, after consulting the sewerage undertaker, direct the undertaker to make such modifications of the procedure, or the manner in which the procedure operates, as may be specified in the direction¹¹.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'customers or potential customers' see PARA 1016 note 12.

3 Water Industry Act 1991 s 116A(1) (s 116A added by the Competition and Service (Utilities) Act 1992 s 33). As to the meaning of 'sewerage services' see PARA 1014 note 9. The duty of a sewerage undertaker to comply with the Water Industry Act 1991 s 116A(1) and with any direction given to it under s 116A(4) or s 116A(6) is enforceable by the Water Services Regulation Authority under s 18 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 163); s 116A(8) (as so added; and amended by the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

4 As to the meaning of 'modifications' see PARA 1007 note 10.

5 Water Industry Act 1991 s 116A(2) (as added (see note 3); and amended by the Water Act 2003 s 36(2)). The Water Industry Act 1991 s 116A(2) does not apply to any modification made in compliance with a direction under s 116A(6) (see the text and note 11); s 116A(7) (as so added).

6 Water Industry Act 1991 s 116A(3) (as added (see note 3); and amended by the Water Act 2003 s 36(2)).

7 Water Industry Act 1991 s 116A(4) (as added (see note 3); and amended by the Water Act 2003 s 36(2)). Where the Authority is considering whether to exercise its powers under the Water Industry Act 1991 s 116A(4) or s 116A(6) in relation to a sewerage undertaker, it is the duty of that undertaker to give him such information as it may reasonably require for the purpose of assisting it in coming to a decision: s 116A(9) (as so added and amended). As to the meaning of 'information' see PARA 1006 note 13. See also note 3.

8 Water Industry Act 1991 s 116A(5) (as added: see note 3).

9 Water Industry Act 1991 s 116A(5)(a) (as added: see note 3).

10 Water Industry Act 1991 s 116A(5)(b) (as added (see note 3); and amended by the Water Act 2003 s 36(2)).

11 Water Industry Act 1991 s 116A(6) (as added (see note 3); and amended by the Water Act 2003 s 36(2)). See also notes 3, 7.

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1018. Duty to comply with sewer requisition.

It is the duty of a sewerage undertaker¹ to provide a public sewer² to be used for the drainage for domestic purposes³ of premises in a particular locality in its area⁴ if: (1) the undertaker is required to provide the sewer⁵ by a notice⁶ served on the undertaker by one or more of the persons who are entitled to require the provision of the sewer for that locality⁷; (2) the premises in that locality the drainage of which would be by means of that sewer are premises on which there are buildings or premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out⁸; and (3) certain conditions are satisfied in relation to that requirement⁹.

It is the duty of a sewerage undertaker¹⁰ to provide a lateral drain¹¹ to communicate with a public sewer and to be used for the drainage for domestic purposes of premises in its area if: (a) the undertaker is required to provide the lateral drain by a notice served on the undertaker by one or more of the persons who are entitled to require the provision of the lateral drain¹²; (b) the premises the drainage of which would be by means of that lateral drain are premises on which there are buildings or premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out¹³; and (c) certain conditions are satisfied in relation to that requirement¹⁴.

The duty of a sewerage undertaker to provide a public sewer or, as the case may be, a lateral drain, is owed to the person who requires the provision of the sewer or lateral drain or, as the case may be, to each of the persons who joins in doing so¹⁵. Where such a duty is owed to any person, any breach of that duty which causes that person to sustain loss or damage¹⁶ is actionable at the suit of that person; but, in any proceedings so brought against a sewerage undertaker, it is a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach¹⁷.

A sewerage undertaker is not in breach of its above duty to comply with a sewer requisition¹⁸ in relation to any locality or (in the case of a lateral drain) in relation to any premises unless¹⁹: (i) the period of six months beginning with the relevant day²⁰ has expired²¹; and (ii) the sewerage undertaker has not, before the end of that period, so laid (as the case may be) the public sewer to be provided as to enable drains²² and private sewers²³ to be used for the drainage of premises in the locality to communicate with the public sewer, or the lateral drain to be provided as to enable the drain to be used for the drainage of premises to communicate with a public sewer vested in that undertaker, at certain places²⁴.

¹ ie in accordance with the Water Industry Act 1991 s 101: see the text and notes 18-24. As to sewerage undertakers see PARA 999.

² As to the meaning of 'public sewer' see PARA 1000.

³ The reference to domestic purposes, in relation to the drainage of premises to which a requirement under the Water Industry Act 1991 s 98 relates, is a reference: (1) where there are buildings on those premises, to such domestic sewerage purposes as are specified in relation to those buildings in the requirement; and (2) where any person is proposing to erect buildings on those premises, to such domestic sewerage purposes as are so specified in relation to the buildings and to times after the erection of the buildings: s 98(5) (amended by the Water Act 2003 s 95(1), (5)(b)). 'Domestic sewerage purposes', in relation to any premises, means any one or more of the following purposes:

173 (a) the removal, from buildings on the premises and from land occupied with and appurtenant to the buildings, of the contents of lavatories;

174 (b) the removal, from such buildings and from such land, of water which has been used for cooking or washing; and

175 (c) the removal, from such buildings and such land, of surface water,

but does not, by virtue of head (b) above, include the removal of any water used for the business of a laundry or for a business of preparing food or drink for consumption otherwise than on the premises: Water Industry Act 1991 s 117(1). 'Surface water' includes water from roofs: s 219(1).

4 Water Industry Act 1991 s 98(1). As to the power to construct lateral drains following provision of a public sewer see s 101B; and PARA 1022.

5 As to the meaning of 'sewer' see PARA 998.

6 As to the meaning of 'notice' see PARA 1037 note 2.

7 Water Industry Act 1991 s 98(1)(a). The following persons are entitled to require provision of a public sewer for any locality:

176 (1) the owner of any premises in that locality (s 98(2)(a));

177 (2) the occupier of any premises in that locality (s 98(2)(b));

178 (3) any local authority within whose area the whole or any part of that locality is situated (s 98(2)(c));

179 (4) where the whole or any part of that locality is situated in a new town (within the meaning of the New Towns Act 1981) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1310 et seq), the new towns residuary body and the development corporation for the new town (Water Industry Act 1991 s 98(2)(d) (amended by the Government of Wales Act 1998 Sch 18 Pt IV); and the Housing and Regeneration Act 2008 Sch 8 paras 55, 58(a)); and

180 (5) where the whole or any part of that locality is situated within an area designated as an urban development area under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1422 et seq), the urban development corporation (Water Industry Act 1991 s 98(2)(e)).

As to the meaning of 'owner' see PARA 1004 note 9. As to the meaning of 'local authority' see PARA 99. As to the meaning of 'new towns residuary body' see PARA 1013 note 1.

8 Water Industry Act 1991 s 98(1)(b).

9 Water Industry Act 1991 s 98(1)(c). The conditions to be satisfied are the conditions in s 99 (see PARA 1019); see s 98(1)(c).

10 In accordance with the Water Industry Act 1991 s 101: see the text and notes 18-24.

11 As to the meaning of 'lateral drain' see PARA 1003 note 2.

12 Water Industry Act 1991 s 98(1A)(a) (s 98(1A) added by the Water Act 2003 s 95(1), (2)). The following persons are entitled to require the provision of a lateral drain:

181 (1) the owner of the premises the drainage of which would be by means of that lateral drain (Water Industry Act 1991 s 98(2A)(a) (s 98(2A) added by the Water Act 2003 s 95(1), (3)));

182 (2) the occupier of those premises (Water Industry Act 1991 s 98(2A)(b) (as so added));

183 (3) any local authority within whose area those premises are situated (s 98(2A)(c) (as so added));

184 (4) where those premises are situated in a new town (within the meaning of the New Towns Act 1981) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1310 et seq), the new towns residuary body and the development corporation for the new town (Water Industry Act

1991 s 98(2A)(d) (as so added; and amended by the Housing and Regeneration Act 2008 Sch 8 paras 55, 58(b)); and

185 (5) where those premises are situated within an area designated as an urban development area under the Local Government, Planning and Land Act 1980 Pt XVI (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1422 et seq), the urban development corporation (Water Industry Act 1991 s 98(2A)(e) (as so added)).

13 Water Industry Act 1991 s 98(1A)(b) (as added: see note 12).

14 Water Industry Act 1991 s 98(1A)(c) (as added: see note 12). The conditions to be satisfied are the conditions in s 99 (see PARA 1019): see s 98(1A)(c) (as so added).

15 Water Industry Act 1991 s 98(3) (amended by the Water Act 2003 s 95(1), (4)(a)).

16 'Damage', in relation to individuals, includes death and any personal injury, including any disease or impairment of physical or mental condition: Water Industry Act 1991 s 219(1).

17 Water Industry Act 1991 s 98(4) (amended by the Competition and Service (Utilities) Act 1992 Sch 1 para 26).

18 le its duty under the Water Industry Act 1991 s 98.

19 Water Industry Act 1991 s 101(1) (s 101 substituted by the Water Act 2003 s 95(7)). As to the force and reach of the Water Industry Act 1991 s 101 see *Thames Water Utilities Ltd v London Underground Ltd* [2004] EWCA Civ 615, [2004] All ER (D) 240 (May).

20 For these purposes, 'relevant day', in relation to a requirement to provide a public sewer for any locality or, as the case may be, a lateral drain, means the day after whichever is the later of the following: (1) the day on which the conditions specified in the Water Industry Act 1991 s 99 (see PARA 1019) are satisfied in relation to the requirement; and (2) the day on which the place or places where (as the case may be) drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer, or the lateral drain will communicate with a public sewer and the remainder of the drain will connect with the lateral drain, are determined under s 101(3) (see note 24): s 101(5) (as substituted: see note 19).

21 Water Industry Act 1991 s 101(1)(a) (as substituted: see note 19). The period may be extended: (1) by agreement between the undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or (2) where there is a dispute as to whether the period should be extended, by the Water Services Regulation Authority on a reference under s 101(4): s 101(2) (as so substituted). For the purposes of s 101(2), (3), a reference may be made to the Authority for determination under s 30A (see **WATER AND WATERWAYS** vol 100 (2009) PARA 131) by either party to the dispute: s 101(4) (as so substituted). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

22 As to the meaning of 'drain' see PARA 998.

23 As to the meaning of 'private sewer' see PARA 1000 note 4.

24 Water Industry Act 1991 s 101(1)(b) (as substituted: see note 19). The places are: (1) such place or places as are determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer, or, as the case may be, the lateral drain; or (2) in default of agreement, such place or places as are determined by the Authority under s 101(4) (see note 21) to be the place or places at which it is reasonable, in all the circumstances: (a) in relation to the provision of a public sewer, for drains or private sewers to be used for the drainage of premises in the locality in question to communicate with the public sewer; or (b) in relation to the provision of a lateral drain: (i) for the lateral drain to communicate with a public sewer vested in the undertaker; and (ii) for the remainder of the drain of which the lateral drain forms part to connect with the lateral drain: s 101(3) (as so substituted).

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1019. Financial conditions of compliance with sewer requisition.

The conditions¹ are satisfied in relation to a requirement for the provision of a public sewer² or (as the case may be) lateral drain³ by a sewerage undertaker⁴ if: (1) such undertakings as the undertaker may have reasonably required⁵ have been given by the person or persons who have required the provision of the sewer or (as the case may be) lateral drain⁶; and (2) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who may be required to secure his undertakings⁷.

The undertakings which a sewerage undertaker may require⁸ in respect of any public sewer are undertakings which⁹: (a) bind the person or persons mentioned to pay to the undertaker either (at the election of such person or persons), in respect of each of the 12 years following the provision of the sewer, an amount not exceeding the relevant deficit¹⁰ (if any) for that year on that sewer, or, following the provision of the sewer, a single amount not exceeding the discounted aggregate deficit¹¹ on that sewer¹²; and (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree¹³.

The undertakings which a sewerage undertaker may require¹⁴ in respect of any lateral drain are undertakings¹⁵ which: (i) bind the person or persons mentioned to pay to the undertaker, following provision of the lateral drain, on such terms as may be specified in the undertaking, an amount not exceeding the costs reasonably incurred in or in connection with the provision of the lateral drain¹⁶; and (ii) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability apportioned in such manner as they may agree¹⁷.

Any dispute between a sewerage undertaker and any other person¹⁸ as to: (A) the undertakings or security required by the undertaker for these purposes¹⁹; or (B) the amount required to be paid in pursuance of any such undertaking²⁰, may be referred to the Water Services Regulation Authority for determination²¹ by either party to the dispute²².

1 Ie the conditions mentioned in the Water Industry Act 1991 s 98(1)(c) or s 98(1A)(c): see PARA 1018.

2 As to the meaning of 'public sewer' see PARA 1000.

3 As to the meaning of 'lateral drain' see PARA 1003 note 2.

4 Water Industry Act 1991 s 99(1) (amended by the Water Act 2003 s 95(6)(a)(ii)). As to sewerage undertakers see PARA 999.

5 Ie required under the Water Industry Act 1991 s 99(2) (see the text and notes 8-13) or (as the case may be) s 99(2A) (see the text and notes 14-17).

6 Water Industry Act 1991 s 99(1)(a) (amended by the Water Act 2003 s 95(6)(a)(iii)).

7 Water Industry Act 1991 s 99(1)(b). A person may be required to secure his undertakings in relation to the provision of a public sewer, or (as the case may be) a lateral drain if: (1) it was by virtue of s 98(2)(a) or s 98(2)(b) or (as the case may be) s 98(2A)(a) or s 98(2A)(b) (see PARA 1018) that he required, or joined in requiring, the provision of the sewer or drain; and (2) he is not a public authority: s 99(3) (substituted by the Water Act 2003 s 95(6)(c)). 'Public authority' means any Minister of the Crown or government department, the Environment Agency, any local authority or county council or any person certified by the Secretary of State to

be a public authority for the purposes of the Water Industry Act 1991: s 219(1) (definition amended by the Environment Act 1995 Sch 22 para 125). As to the meaning of 'local authority' see PARA 99. As to the Environment Agency see PARA 68 et seq. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

Where, for the purposes of the Water Industry Act 1991 s 99(1)(b), any sums have been deposited with a sewerage undertaker by way of security for the discharge of any obligation, the undertaker must pay interest at such rate as may be determined either by the undertaker with the approval of the Water Services Regulation Authority, or in default of such a determination, by the Authority, on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker: s 99(4) (amended by the Water Act 2003 s 36(2)). An approval or determination given or made by the Authority for these purposes may be given or made in relation to the provision of a particular public sewer or (as the case may be) lateral drain, in relation to the provision of sewers or lateral drains of a particular description or in relation to the provision of public sewers or lateral drains generally, and may be revoked at any time: Water Industry Act 1991 s 99(5) (amended by the Water Act 2003 ss 36(2), 95(6)(d)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

8 le for the purposes of the Water Industry Act 1991 s 99(1).

9 Water Industry Act 1991 s 99(2).

10 'Relevant deficit' has the meaning given by the Water Industry Act 1991 s 100 (see PARA 1020): see s 99(7) (substituted by the Water Act 2003 s 93(1)(c)).

11 'Discounted aggregate deficit' has the meaning given by the Water Industry Act 1991 s 100A (see PARA 1020): see s 99(7) (as substituted: see note 10).

12 Water Industry Act 1991 s 99(2)(a) (substituted by the Water Act 2003 s 93(1)(a)).

13 Water Industry Act 1991 s 99(2)(b).

14 le for the purposes of the Water Industry Act 1991 s 99(1).

15 Water Industry Act 1991 s 99(2A) (s 99(2A) added by the Water Act 2003 s 96(6)(b)).

16 Water Industry Act 1991 s 99(2A)(a) (as added: see note 15).

17 Water Industry Act 1991 s 99(2A)(b) (as added: see note 15).

18 Water Industry Act 1991 s 99(6).

19 Water Industry Act 1991 s 99(6)(a).

20 Water Industry Act 1991 s 99(6)(b).

21 le determination under the Water Industry Act 1991 s 30A: see **WATER AND WATERWAYS** vol 100 (2009) PARA 131.

22 Water Industry Act 1991 s 99(6) (amended by the Water Act 2003 s 93(1)(b)).

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1020. Calculation of relevant deficit and discounted aggregate deficit.

The relevant deficit¹ for any year on a public sewer² is the amount (if any) by which the drainage charges payable for the use during that year of that sewer³ are exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer⁴. The annual borrowing costs of a loan of the amount required for the provision of a public sewer is the aggregate amount which would fall to be paid in any year by way of payments of interest and repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that sewer⁵ as were not incurred in the provision of additional capacity⁶ had been borrowed, by the sewerage undertaker providing the sewer, on terms requiring interest to be paid and capital to be repaid in 12 equal annual instalments and providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined for these purposes⁷. Such a determination must be made either by the undertaker with the approval of the Water Services Regulation Authority⁸ or, in default of such a determination, by the Authority⁹. An approval or determination given or made by the Authority¹⁰: (1) may be given or made in relation to the provision of a particular public sewer, in relation to the provision of sewers of a particular description or in relation to the provision of public sewers generally¹¹; and (2) may be revoked at any time except in relation to a public sewer in respect of which the conditions¹² have already been satisfied¹³.

The discounted aggregate deficit¹⁴ on a public sewer is the amount equal to the sum of the estimated relevant deficits¹⁵ for each of the 12 years following the provision of the sewer, in each case discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority¹⁶.

1 le the relevant deficit for the purposes of the Water Industry Act 1991 s 99: see PARA 1019.

2 As to the meaning of 'public sewer' see PARA 1000.

3 Any reference to the drainage charges payable for the use during any year of any sewer provided by a sewerage undertaker is a reference to so much of the aggregate of any charges payable to the sewerage undertaker in respect of services provided in the course of that year as represents charges which: (1) have been imposed by the undertaker in relation to such of the premises connected with that sewer as are premises where there are buildings; and (2) are reasonably attributable to the use of that sewer for the drainage for domestic sewerage purposes of those premises or to the disposal of effluent drained for any such purpose from those premises: Water Industry Act 1991 s 100(7). 'Services' includes facilities: s 219(1). As to the meaning of 'domestic sewerage purposes' see PARA 1018 note 3. As to the meaning of 'effluent' see PARA 1003 note 2. As to sewerage undertakers see PARA 999.

4 Water Industry Act 1991 s 100(1).

5 Costs reasonably incurred in providing a public sewer (the 'new sewer') include: (1) the costs reasonably incurred in providing such other public sewers and such pumping stations as it is necessary to provide in consequence of the provision of the new sewer; and (2) such proportion (if any) as is reasonable of the costs reasonably incurred in providing any such additional capacity in an earlier public sewer as falls to be used in consequence of the provision of the new sewer: Water Industry Act 1991 s 100(4). The reference to an earlier public sewer, in relation to the new sewer, is a reference to any public sewer which: (a) has been provided in the period of 12 years immediately before the provision of the new sewer; and (b) was so provided in pursuance of a public sewer requisition: s 100(5). 'Public sewer requisition' means: (i) a requirement under s 98 (see PARA 1018) (including, by virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 2 para 1, a requirement under the Water Act 1989 s 71 (repealed)); (ii) a requirement under the provisions of the Water Act 1973 s 16 (repealed) (sewer requisitions); or (iii) a requirement under any local statutory provision

corresponding to the Water Industry Act 1991 s 98 or to any of the provisions of the Water Act 1973 s 16 (repealed); Water Industry Act 1991 s 100(9). 'Local statutory provision' means: (A) a provision of a local Act (including an Act confirming a provisional order); (B) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within this definition; (C) a provision of an instrument made under any provision falling within head (A) or head (B) above; or (D) a provision of any other instrument which is in the nature of a local enactment: s 219(1).

6 Any reference to the provision of additional capacity in a public sewer provided in pursuance of a requirement under any enactment is a reference to such works carried out or other things done in connection with the provision of that sewer as are carried out or done for the purpose of enabling that sewer to be used for purposes in addition to those for which it is necessary to provide the sewer in order to comply with the requirement: Water Industry Act 1991 s 100(6). As to the meaning of 'enactment' see PARA 1013 note 7.

7 Water Industry Act 1991 s 100(2).

8 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

9 Water Industry Act 1991 s 100(3) (amended by the Water Act 2003 s 36(2)).

10 Water Industry Act 1991 s 100(8) (amended by the Water Act 2003 s 36(2)).

11 Water Industry Act 1991 s 100(8)(a).

12 Ie the conditions referred to in the Water Industry Act 1991 s 99(1): see PARA 1019.

13 Water Industry Act 1991 s 100(8)(b).

14 Ie the discounted aggregate deficit for the purposes of the Water Industry Act 1991 s 99: see PARA 1019.

15 The estimated relevant deficit (see the text and notes 1-13) for any year is the amount (if any) by which the estimated drainage charges payable for the use during that year of that sewer would be exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer: Water Industry Act 1991 s 100A(2) (s 100A added by the Water Act 2003 s 93(3)). Any reference in the Water Industry Act 1991 s 100A to the estimated drainage charges payable for the use during any year of any sewer is a reference to so much of the aggregate of any charges expected to be payable to the sewerage undertaker for the provision of services in the course of that year as would represent charges: (1) imposed by the undertaker in relation to such of the premises with which the sewer is expected to be connected as are premises where there are buildings; and (2) reasonably attributable to the use of that sewer for the drainage for domestic sewerage purposes of those premises or to the disposal of effluent drained for any such purposes from those premises: s 100A(4) (as so added). For the purposes of s 100A(4), a thing is expected to be the case if, at the time the relevant calculation is made, it is reasonably likely to occur: s 100A(5) (as so added).

The provisions of s 100(2)-(6), (8) and s 100(9) (see the text and notes 5-13) (which relate to the annual borrowing costs of a loan of the amount required for the provision of a public sewer) apply for the purposes of s 100A as they apply for the purposes of s 100: s 100A(3) (as so added).

16 Water Industry Act 1991 s 100A(1), (6) (as added: see note 15).

A determination made by the Authority for the purposes of s 100A(6): (1) may be made in relation to the provision of a particular public sewer or in relation to the provision of public sewers generally; and (2) may be revoked at any time except in relation to a public sewer in respect of which the conditions referred to in s 99(1) (see PARA 1019) have already been satisfied: s 100A(7) (as so added).

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1021. Provision of public sewers otherwise than by requisition.

It is the duty of a sewerage undertaker¹ to provide a public sewer² to be used for the drainage for domestic sewerage purposes³ of premises in a particular locality in its area if certain conditions are satisfied⁴. The conditions are⁵:

- 2237 (1) that the premises in question, or any of those premises, are premises on which there are buildings⁶;
- 2238 (2) that the drains or sewers⁷ used for the drainage for domestic sewerage purposes of the premises in question do not, either directly or through an intermediate drain or sewer, connect with a public sewer⁸; and
- 2239 (3) that the drainage of any of the premises in question is giving, or is likely to give, rise to such adverse effects to the environment or amenity that it is appropriate, having regard to any guidance issued by the Secretary of State and all other relevant considerations, to provide a public sewer for the drainage for domestic sewerage purposes of the premises in question⁹.

A sewerage undertaker is only to be taken to be in breach of its duty to provide a public sewer to be used for the drainage for domestic sewerage purposes of premises in a particular locality in its area¹⁰ where, and to the extent that, it has accepted, or the Environment Agency has determined, that it is under such a duty and where any time accepted by it, or determined by the Environment Agency, as the time by which the duty is to that extent to be performed has passed¹¹.

Any dispute between a sewerage undertaker and an owner¹² or occupier of any premises in its area¹³ as to: (a) whether the undertaker is under a duty¹⁴ to provide a public sewer to be used for any such drainage of certain premises¹⁵; (b) the domestic sewerage purposes for which any such sewer ought to be provided¹⁶; or (c) the time by which any such duty of the undertaker ought to be performed¹⁷, is to be determined by the Environment Agency; and it may be referred to the Environment Agency for determination by either of the parties to the dispute¹⁸. The Environment Agency must notify the parties of the reasons for its decision on any dispute so referred to it, and may make any such recommendations, or give any such guidance, relating to or in connection with the drainage of the premises or locality in question as it considers appropriate¹⁹. The decision of the Environment Agency on any dispute so referred to it is final²⁰.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'public sewer' see PARA 1000.

3 As to the meaning of 'domestic sewerage purposes' see PARA 1018 note 3.

4 Water Industry Act 1991 s 101A(1) (s 101A added by the Environment Act 1995 Sch 22 para 103). This provision is expressed to be without prejudice to the Water Industry Act 1991 s 98: see PARA 1018. Subject to s 101A(7)-(10), the duty of a sewerage undertaker by virtue of s 101A(1) is enforceable under s 18 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 163) by the Secretary of State or, with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Water Services Regulation Authority: s 101A(6) (as so added; and amended by the Water Act 2003 s 36(2)). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers

see PARA 59. As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

The words 'premises in a particular locality' in the Water Industry Act 1991 s 101A(1) do not necessarily import all the premises situated in the locality: see *R (on the application of Anglian Water Services Ltd) v Environment Agency* [2002] EWCA Civ 05, (2002) Times, 18 February, [2002] All ER (D) 307 (Jan). See also *R (on the application of Dwr Cymru Cyfyngedig (Welsh Water)) v Environment Agency* [2009] EWHC 453 (Admin), [2009] 2 All ER 919 (sewerage undertaker failed to establish legal basis in which it could withdraw decision to accept the duty).

As to the power to construct lateral drains following provision of a public sewer see the Water Industry Act 1991 s 101B; and PARA 1022.

5 Water Industry Act 1991 s 101A(2) (as added: see note 4). As to the balancing exercise under s 101A(2), (3) see *Dwr Cymru Cyf (Welsh Water) v Environment Agency* [2003] EWHC 336 (Admin), (2003) Times 29 April, [2003] All ER (D) 411 (Feb).

6 Water Industry Act 1991 s 101A(2)(a) (as added (see note 4); and amended by the Water Act 2003 s 94(a), Sch 9 Pt 3).

7 As to the meanings of 'drain' and 'sewer' see PARA 998.

8 Water Industry Act 1991 s 101A(2)(b) (as added: see note 4).

9 Water Industry Act 1991 s 101A(2)(c) (as added (see note 4); and amended by the Water Act 2003 s 94(b), Sch 9 Pt 3). Without prejudice to the generality of the Water Industry Act 1991 s 101A(2)(c), regard must be had to the following considerations, so far as relevant, in determining whether it is appropriate for any sewer to be provided by virtue of s 101A:

186 (1) the geology of the locality in question or of any other locality (s 101A(3)(a) (as so added));

187 (2) the number of premises, being premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer (s 101A(3)(b) (as so added));

188 (3) the costs of providing that sewer (s 101A(3)(c) (as so added));

189 (4) the nature and extent of any adverse effects to the environment or amenity arising, or likely to arise, as a result of the premises or, as the case may be, the locality in question not being drained by means of a public sewer (s 101A(3)(d) (as so added)); and

190 (5) the extent to which it is practicable for those effects to be overcome otherwise than by the provision (whether by virtue of s 101A or otherwise) of public sewers, and the costs of so overcoming those effects (s 101A(3)(e) (as so added)).

As to the balancing exercise under s 101A(2), (3) see *Dwr Cymru Cyfyngedig v Environment Agency* [2003] EWHC 336 (Admin), (2003) Times 29 April, [2003] All ER (D) 411 (Feb). As to the practicability test see *R (on the application of Anglian Water Services Ltd) v Environment Agency* [2003] EWHC 1506 (Admin), [2004] Env LR 15, [2003] All ER (D) 392 (Jun).

Guidance issued by the Secretary of State under the Water Industry Act 1991 s 101A may:

191 (a) relate to how regard is to be had to the considerations mentioned in heads (1)-(5) above (s 101A(4)(a) (as so added));

192 (b) relate to any other matter which the Secretary of State considers may be a relevant consideration in any case and to how regard is to be had to any such matter (s 101A(4)(b) (as so added));

193 (c) set out considerations, other than those mentioned in heads (1)-(5) above, to which (so far as relevant) regard must be had in determining whether it is appropriate for any sewer to be provided by virtue of s 101A (s 101A(4)(c) (as so added));

194 (d) relate to how regard is to be had to any such consideration as is mentioned in head (c) above (s 101A(4)(d) (as so added));

195 (e) without prejudice to heads (a)-(d) above, relate to how a sewerage undertaker is to discharge its functions under s 101A (s 101A(4)(e) (as so added)).

As to the meaning of 'functions' see PARA 1004 note 4. Before issuing guidance, the Secretary of State must consult the Environment Agency, the Authority, and such other bodies or persons as he considers appropriate; and the Secretary of State must arrange for any guidance issued by him to be published in such manner as he considers appropriate: s 101A(5) (as so added; and amended by the Water Act 2003 s 36(2)). As to the Environment Agency see PARA 68 et seq.

- 10 le the duty under the Water Industry Act 1991 s 101A(1): see the text and note 4.
- 11 Water Industry Act 1991 s 101A(10) (as added: see note 4).
- 12 As to the meaning of 'owner' see PARA 1004 note 9.
- 13 Water Industry Act 1991 s 101A(7) (as added: see note 4).
- 14 le by virtue of the Water Industry Act 1991 s 101A(1): see the text and note 4.
- 15 Water Industry Act 1991 s 101A(7)(a) (as added: see note 4). The premises referred to in the text are the premises mentioned in s 101A(1) (see the text and note 4): see s 101A(7)(a) (as so added).
- 16 Water Industry Act 1991 s 101A(7)(b) (as added: see note 4).
- 17 Water Industry Act 1991 s 101A(7)(c) (as added: see note 4).
- 18 Water Industry Act 1991 s 101A(7) (as added: see note 4).
- 19 Water Industry Act 1991 s 101A(8) (as added: see note 4).
- 20 Water Industry Act 1991 s 101A(9) (as added: see note 4).

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1022. Power to construct lateral drains following provision of public sewers.

Where a sewerage undertaker¹ provides a public sewer² pursuant to a duty to do so³, the undertaker may, at the request of certain persons⁴, also provide at the same time one or more lateral drains⁵ to be used for the drainage for domestic purposes of premises in its area and to communicate with that sewer⁶.

The person making the above request must pay to the water undertaker⁷, following provision of the lateral drain, the costs reasonably incurred in or in connection with providing that drain⁸.

Any dispute between the sewerage undertaker and the person making the request as to: (1) whether a lateral drain should be provided pursuant to the request⁹; or (2) the costs reasonably incurred in the provision of a lateral drain¹⁰, may be referred by either party to the dispute to the Water Services Regulation Authority¹¹ for determination¹².

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'public sewer' see PARA 1000.

3 Ie a duty under the Water Industry Act 1991 s 98 (see PARA 1018) or under s 101A (see PARA 1021).

4 Such a request (ie under the Water Industry Act 1991 s 101B(1)) may be made:

196 (1) in the case of a public sewer to be provided under s 98 (see PARA 1018), by the person who requires the provision of the sewer under that provision (s 101B(2)(a) (s 101B added by the Water Act 2003 s 95(9))); and

197 (2) in the case of a public sewer to be provided under the Water Industry Act 1991 s 101A (see PARA 1021), by the owner or occupier of any premises in respect of which the duty to provide the sewer arises under that provision (but any request may only be for the provision of a lateral drain to his premises) (s 101B(2)(b) (as so added)).

As to the meaning of 'owner' see PARA 1004 note 9.

5 As to the meaning of 'lateral drain' see PARA 1003 note 2.

6 Water Industry Act 1991 s 101B(1) (as added: see note 4). Any lateral drain provided pursuant to a request made to a sewerage undertaker under s 101B belongs to the undertaker: s 101B(5) (as so added).

7 As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq.

8 Water Industry Act 1991 s 101B(3) (as added: see note 4).

9 Water Industry Act 1991 s 101B(4)(a) (as added: see note 4).

10 Water Industry Act 1991 s 101B(4)(b) (as added: see note 4).

11 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

12 Water Industry Act 1991 s 101B(4) (as added: see note 4). As to the determination see s 30A; and **WATER AND WATERWAYS** vol 100 (2009) PARA 131.

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1023. New connections with public sewers.

Where, on the application of any qualifying person¹: (1) it appears to the Water Services Regulation Authority² that it is necessary or expedient for the purposes of the provisions relating to sewerage services³ that the sewerage undertaker specified in the application (the 'established undertaker') ought to permit a main connection⁴ into his sewerage system⁵; and (2) the Authority is satisfied that the making of such a connection cannot be secured by agreement⁶, the Authority may by order⁷ require the established undertaker to allow the connection for such period and on such terms and conditions as may be provided in the order⁸.

Where the application is made by a person who is not a sewerage undertaker at the time when the application is made, an order made requiring the established undertaker to allow the connection⁹ in response to that application must be expressed not to come into force until the applicant becomes a sewerage undertaker for the area specified in the order, or for an area which includes that area¹⁰. Such an order has effect as an agreement between the established undertaker and the applicant but may be varied or revoked by a subsequent order made by the Authority on the application of either party to the agreement, as well as by agreement between the parties¹¹.

The Authority may not make an order unless it has first consulted the Environment Agency¹². In exercising its functions under these provisions¹³, the Authority must have regard to the desirability of:

- 2240 (a) facilitating effective competition within the sewerage services industry¹⁴;
- 2241 (b) the existing undertaker's recovering the expenses of complying with its obligations by virtue of these provisions¹⁵ and securing a reasonable return on its capital¹⁶;
- 2242 (c) the existing undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works¹⁷;
- 2243 (d) not putting at risk the ability of the existing undertaker to meet its existing obligations, or likely future obligations, to provide such services¹⁸.

1 'Qualifying person' means: (1) a sewerage undertaker; or (2) a person who has made an application for an appointment or variation under the Water Industry Act 1991 s 8 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 139) which has not been determined: s 110A(2) (s 110A added by the Competition and Service (Utilities) Act 1992 s 45). As to sewerage undertakers see PARA 999.

2 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

3 I.e. the Water Industry Act 1991 Pt IV (ss 94-141).

4 For these purposes, a 'main connection' means a connection between a sewer or disposal main and a sewer or disposal main or a connection which allows a sewer or disposal main to discharge directly into a sewage disposal works: Water Industry Act 1991 s 110A(3) (as added: see note 1). As to the meaning of 'sewer' see PARA 998. As to the meaning of 'sewage disposal works' see PARA 998.

5 Water Industry Act 1991 s 110A(1)(a) (as added (see note 1); and amended by the Water Act 2003 s 36(2)).

6 Water Industry Act 1991 s 110A(1)(b) (as added: see note 1).

7 Orders made under the Water Industry Act 1991 s 110A(1), not being made by statutory instrument, are not set out or referred to in this work.

8 Water Industry Act 1991 s 110A(1) (as added (see note 1); and amended by the Water Act 2003 s 36(2)).

9 le an order under the Water Industry Act 1991 s 110A.

10 Water Industry Act 1991 s 110A(4) (as added: see note 1). As to the areas of sewerage undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 138.

11 Water Industry Act 1991 s 110A(5) (as added (see note 1); and amended by the Water Act 2003 s 36(2)). This provision is expressed to be subject to the Water Industry Act 1991 s 110A(4) (see the text and note 10): see s 110A(5) (as so added).

12 Water Industry Act 1991 s 110A(6) (as added (see note 1); and amended by the Environment Act 1995 Sch 22 para 104; and the Water Act 2003 s 36(2)). As to the Environment Agency see PARA 68 et seq.

13 le under the Water Industry Act 1991 s 110A. As to the meaning of 'functions' see PARA 1004 note 4.

14 Water Industry Act 1991 s 110A(7)(a) (as added: see note 1). As to the meaning of 'sewerage services' see PARA 1014 note 9.

15 le the Water Industry Act 1991 s 110A.

16 Water Industry Act 1991 s 110A(7)(b) (as added: see note 1).

17 Water Industry Act 1991 s 110A(7)(c) (as added: see note 1).

18 Water Industry Act 1991 s 110A(7)(d) (as added: see note 1).

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1024. Pipe-laying.

A sewerage undertaker¹, for the purpose of carrying out his functions², has powers to lay a relevant pipe³ in, under or over any street⁴ or in any land which is not in, under or over a street and to keep it there, to inspect, maintain, adjust, repair or alter any such pipes, and to carry out any works requisite for, or incidental to, the exercise of these powers⁵.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'functions' see PARA 1004 note 4.

3 As to references to a relevant pipe see **WATER AND WATERWAYS** vol 101 (2009) PARA 462.

4 As to the meaning of 'street' see PARA 1004 note 9.

5 See the Water Industry Act 1991 ss 158(1), 159(1); and **WATER AND WATERWAYS** vol 101 (2009) PARAS 462-463. As to the power to require a sewerage undertaker to alter or remove pipes and other apparatus see s 185; and **WATER AND WATERWAYS** vol 101 (2009) PARA 489. As to drainage of surface water under s 159 see *British Waterways Board v Severn Trent Water Ltd* [2001] EWCA Civ 276, [2002] Ch 25, [2001] 3 All ER 673 (no implied right to power to discharge drained surface water into a canal without the consent of the canal's owner).

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1025. Power to carry out works for sewerage purposes.

A sewerage undertaker¹ may, by agreement with the owner² or occupier of any premises, carry out at that person's expense: (1) any work in connection with the construction, laying, alteration or repair of a sewer or drain³ which that person is entitled to carry out⁴; or (2) any work which the undertaker has required that person to carry out under the provisions relating to sewerage services⁵, and for that purpose the undertaker has all such rights as that person would have⁶.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'owner' see PARA 1004 note 9.

3 As to the meanings of 'sewer' and 'drain' see PARA 998.

4 Water Industry Act 1991 s 160(1)(a).

5 Water Industry Act 1991 s 160(1)(b). The provisions relating to sewerage services referred to in the text are the provisions of Pt IV (ss 94-141): see s 160(1)(b).

6 Water Industry Act 1991 s 160(1). The Public Health Act 1936 ss 291, 293, 294 (see PARAS 122-123) apply in relation to the recovery by a sewerage undertaker of any sums under the Water Industry Act 1991 s 160 as they apply in relation to the recovery of expenses under the Public Health Act 1936 by a local authority: Water Industry Act 1991 s 160(2). As to the meaning of 'local authority' see PARA 99.

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1026. Power to deal with foul water and pollution.

A sewerage undertaker¹ has the power to carry out in a street² works requisite for securing that the water in any relevant waterworks³ is not polluted or otherwise contaminated and to carry out incidental works, which include the breaking open of a street, tunnelling or boring under a street, breaking up or opening a sewer, drain⁴ or tunnel and moving or removing earth and other materials⁵. This power applies also in relation to land not in, under or over a street⁶. The provisions relating to pipe-laying⁷, so far as applicable, have effect in relation to these powers⁸.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'street' see PARA 1004 note 9.

3 As to the meanings of 'waterworks' and 'relevant waterworks' see PARA 329.

4 As to the meanings of 'sewer' and 'drain' see PARA 998.

5 See the Water Industry Act 1991 s 161(1); and PARA 329.

6 See the Water Industry Act 1991 s 161(2); and PARA 329.

7 In the Water Industry Act 1991 s 158 and s 159: see PARA 1024; and **WATER AND WATERWAYS** vol 101 (2009) PARAS 462-463.

8 See the Water Industry Act 1991 s 161(1), (2); and PARA 329.

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1027. Powers of entry.

A person designated in writing by a sewerage undertaker¹ may enter premises for the purposes of the carrying out of any survey or tests to determine whether it is appropriate and practicable for the undertaker to exercise any relevant works power² or how such power ought to be exercised or for the exercise of such a power³.

Any person designated in writing for the purpose by a sewerage undertaker, on producing any duly authenticated document showing his authority, has a right to enter any premises at all reasonable hours⁴:

- 2244 (1) for the purpose of ascertaining whether there is or has been, on or in connection with the premises, any contravention of any of the relevant sewerage provisions⁵ which it is the function of the undertaker to enforce⁶;
- 2245 (2) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the undertaker to take any action or carry out any works under any of the relevant sewerage provisions⁷;
- 2246 (3) for the purpose of taking action or carrying out any works authorised by or under any of the relevant sewerage provisions to be taken or carried out by the undertaker⁸;
- 2247 (4) generally for the purpose of carrying out the undertaker's functions⁹ under the relevant sewerage provisions¹⁰.

Any person so designated by a sewerage undertaker for the purpose of exercising any power of entry for sewerage purposes¹¹ for the purposes of the provisions relating to trade effluent¹² may, on any occasion on which he so exercises that power in relation to any premises, obtain and take away any sample of any trade effluent which is passing (either directly or through a drain or private sewer¹³) from those premises¹⁴ into any of the undertaker's public sewers¹⁵.

A person who, without having been designated or authorised for the purpose by a relevant undertaker, purports to be entitled to enter any premises or vessel in exercise of a power exercisable in pursuance of any such designation or authorisation is guilty of an offence¹⁶.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'relevant works power' see **WATER AND WATERWAYS** vol 101 (2009) PARA 477.

3 See the Water Industry Act 1991 s 168(1), (2); and **WATER AND WATERWAYS** vol 101 (2009) PARA 477. As to rights of entry and other related powers see further s 168, Sch 6 Pt II; and **WATER AND WATERWAYS** vol 101 (2009) PARA 477 et seq.

4 Water Industry Act 1991 s 171(1). The provisions of s 171, Sch 6 Pt I (see **WATER AND WATERWAYS** vol 101 (2009) PARA 477 et seq) apply to the right of entry conferred by s 171(1): s 171(2). In the case of non-business premises, 24 hours' notice must be given to the occupier: Sch 6 Pt I para 1(1). Schedule 6 Pt I also makes provision in relation to warrants, supplementary powers and duty of confidentiality: see **WATER AND WATERWAYS** vol 101 (2009) PARA 477 et seq.

5 'Relevant sewerage provisions' means the following provisions of the Water Industry Act 1991: (1) Pt IV Chs II, III (ss 98-141) (except ss 98-101 (see PARAS 1018-1020) and s 110 (see PARA 1008) and so much of Pt IV Ch III as provides for regulations under s 138 (see PARA 1059) or has effect by virtue of any such regulations);

(2) s 160 (see PARA 1025), s 171 (see PARA 1027), s 172(4) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 434), s 178 (see PARA 1029), s 184 (see PARA 1037), s 189 (see PARA 1033), s 196 (see PARA 1055), s 204 (see PARA 1057) and s 180, Sch 12 para 4; and (3) the other provisions of the Water Industry Act 1991 so far as they have effect for the purposes of any provision falling within head (1) or head (2) above: s 219(1).

6 Water Industry Act 1991 s 171(1)(a).

7 Water Industry Act 1991 s 171(1)(b).

8 Water Industry Act 1991 s 171(1)(c).

9 As to the meaning of 'functions' see PARA 1004 note 4.

10 Water Industry Act 1991 s 171(1)(d).

11 Ie the power under the Water Industry Act 1991 s 171.

12 Ie the provisions under the Water Industry Act 1991 Pt IV Ch III (ss 118-141): see PARA 1047 et seq. As to the meaning of 'trade effluent' see PARA 1047 note 3; definition applied by s 171(6).

13 As to the meaning of 'drain' see PARA 998; and as to the meaning of 'private sewer' see PARA 1000.

14 As to the meaning of 'trade premises' see PARA 1047 note 1; definition applied by the Water Industry Act 1991 s 171(6).

15 Water Industry Act 1991 s 171(3) (amended by the Water Act 2003 s 97(1), (6)). As to the meaning of 'public sewer' see PARA 1000. As from a day to be appointed, the Water Industry Act 1991 s 171(3) is further amended so as to refer to any other liquid or substances as well as trade effluent: see s 171(3) (prospectively amended by the Water Act 2003 s 88(5)). At the date at which this volume states the law no such day had been appointed.

The Water Industry Act 1991 s 139 (see PARA 1047) has effect for the purposes of s 171 as it has effect for the purposes of Pt IV Ch III: s 171(6).

16 See the Water Industry Act 1991 s 173(1); and **WATER AND WATERWAYS** vol 101 (2009) PARA 481. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 173(1). See also **WATER AND WATERWAYS** vol 101 (2009) PARA 481. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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1028. Complaints in respect of works on private land.

Where a sewerage undertaker¹ exercises any powers to do works on private land², complaints arising may be made to the Water Services Regulation Authority³ which must investigate them unless they appear to it to be vexatious or frivolous, or it is not satisfied that they have been brought to the undertaker's attention and a reasonable opportunity of investigating and dealing with them given, or the complaint is more than 12 months old⁴. Where satisfied that there has been a failure by the undertaker adequately to consult the complainant in the exercise of the powers and that the complainant has suffered loss, damage or inconvenience as a result, the Authority may direct the undertaker to pay compensation⁵.

A sewerage undertaker is obliged to submit to the Secretary of State⁶ for his approval a code of practice with respect to the exercise of its powers to work on private land⁷, or any modifications to a code of practice⁸. The Secretary of State may approve the code of practice, or approve any modifications which have been submitted, or withdraw his approval of any such code or modification⁹.

A contravention of a code of practice, while not affecting the powers conferred on the sewerage undertaker¹⁰, or by itself entitling any person to a payment in respect of a complaint¹¹, or giving rise to any criminal or civil liability, is to be taken into account by the Authority in considering whether to give a direction to the sewerage undertaker to pay compensation¹².

1 As to sewerage undertakers see PARA 999.

2 I.e. under the Water Industry Act 1991 s 159 or s 161(2): see PARAS 1024, 1026, 329; and **WATER AND WATERWAYS** vol 101 (2009) PARA 463.

3 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

4 See the Water Industry Act 1991 s 181(1), (2); and **WATER AND WATERWAYS** vol 101 (2009) PARA 474.

5 See the Water Industry Act 1991 s 181(4); and **WATER AND WATERWAYS** vol 101 (2009) PARA 474.

6 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

7 I.e. under the Water Industry Act 1991 s 159 or s 161(2): see PARAS 1024, 1026, 329; and **WATER AND WATERWAYS** vol 101 (2009) PARA 463.

8 See the Water Industry Act 1991 s 182(1); and **WATER AND WATERWAYS** vol 101 (2009) PARA 475. As to the meaning of 'modifications' see PARA 1007 note 10.

9 See the Water Industry Act 1991 s 182(2); and **WATER AND WATERWAYS** vol 101 (2009) PARA 475.

10 I.e. under the Water Industry Act 1991 Pt VI (ss 155-192).

11 I.e. under the Water Industry Act 1991 s 181(4): see **WATER AND WATERWAYS** vol 101 (2009) PARA 474.

12 See the Water Industry Act 1991 s 182(3); and **WATER AND WATERWAYS** vol 101 (2009) PARA 475. The direction to pay compensation referred to in the text is a direction under s 181(4) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 474): see s 182(3).

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1029. Obstruction of sewerage works etc.

A person who wilfully obstructs any person acting in the execution of any of the relevant sewerage provisions¹ is guilty of an offence². If, on a complaint made by the owner³ of any premises, it appears to a magistrates' court that the occupier of those premises is preventing the owner of those premises from carrying out any work which he is required to carry out by or under any of the relevant sewerage provisions, the court may order the occupier to permit the carrying out of the work⁴.

1 As to the meaning of 'relevant sewerage provisions' see PARA 1027 note 5.

2 Water Industry Act 1991 s 178(1). A person who is guilty of an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 178(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

3 As to the meaning of 'owner' see PARA 1004 note 9.

4 Water Industry Act 1991 s 178(2). The Public Health Act 1936 ss 300-302 (see PARAS 129-130) apply for the purposes of and in relation to the determination under the Water Industry Act 1991 s 178(2) of any matter by a magistrates' court as they apply for the purposes of or in relation to a determination by such a court under the Public Health Act 1936; and, in the case of s 302, as if the reference to a decision of a local authority included a reference to a decision of a sewerage undertaker: Water Industry Act 1991 s 178(3). As to the meaning of 'local authority' see PARA 99.

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1030. Compensation and protective provisions.

There are provisions protecting persons carrying on certain undertakings¹.

A sewerage undertaker² must make full compensation to any person who has sustained damage by reason of the exercise by the undertaker, in relation to a matter as to which that person has not himself been in default, of any of its powers under the relevant sewerage provisions³. Any dispute arising as to the fact of damage, or as to the amount of compensation, must be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the Water Services Regulation Authority⁴. No person is entitled by virtue of these provisions to claim compensation on the ground that a sewerage undertaker has, in the exercise of its powers under the relevant sewerage provisions, declared any sewer⁵, lateral drain⁶ or sewage disposal works⁷, whether belonging to that person or not, to be vested in the undertaker⁸.

1 See the Water Industry Act 1991 s 183, Sch 13 Pt I; and **WATER AND WATERWAYS** vol 101 (2009) PARAS 490-491. As to further protective provisions in respect of sewerage powers for dock undertakers see Sch 13 Pt II. As to the meaning of 'dock undertakers' see PARA 1004 note 9.

2 As to sewerage undertakers see PARA 999.

3 Water Industry Act 1991 s 180, Sch 12 para 4(1). As to the meaning of 'relevant sewerage provisions' see PARA 1027 note 5.

4 Water Industry Act 1991 Sch 12 para 4(2) (amended by the Competition and Service (Utilities) Act 1992 Sch 1 paras 29-31, Sch 2; and the Water Act 2003 s 36(2)). If the compensation claimed under the Water Industry Act 1991 Sch 12 para 4 in any case does not exceed £5,000, all questions as to the fact of damage, liability to pay compensation and the amount of compensation may be referred to the Authority for determination under s 30A (see **WATER AND WATERWAYS** vol 100 (2009) PARA 131) by either party: Sch 12 para 4(3) (amended by the Competition and Service (Utilities) Act 1992 Sch 1 paras 29-31, Sch 2; and the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

5 As to the meaning of 'sewer' see PARA 998.

6 As to the meaning of 'lateral drain' see PARA 1003 note 2.

7 As to the meaning of 'sewage disposal works' see PARA 998.

8 Water Industry Act 1991 Sch 12 para 4(5) (amended by the Water Act 2003 s 97(1), (10)).

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(iii) Undertakers' Powers in relation to Land

1031. Compulsory purchase.

A sewerage undertaker¹ may be authorised by the Secretary of State² to purchase compulsorily land in England and Wales which is required for the purpose of, or in connection with, the carrying out of its functions³. Such authorisation may include the creation of new interests in and rights over land and the extinguishment of pre-existing rights⁴. The land so acquired may include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the Acquisition of Land Act 1981 is, or forms part of, a common or open space or a fuel or field garden allotment⁵.

1 As to sewerage undertakers see PARA 999.

2 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

3 See the Water Industry Act 1991 s 155(1); and **WATER AND WATERWAYS** vol 101 (2009) PARA 453. As to the meaning of 'functions' see PARA 1004 note 4.

4 See the Water Industry Act 1991 s 155(2); and **WATER AND WATERWAYS** vol 101 (2009) PARA 453.

5 See the Water Industry Act 1991 s 155(3); and **WATER AND WATERWAYS** vol 101 (2009) PARA 453. See also **COMPULSORY ACQUISITION OF LAND**. The Acquisition of Land Act 1981 applies to any compulsory purchase under the Water Industry Act 1991 s 155(1) (see the text and note 3) of any land by the sewerage undertaker, and the Acquisition of Land Act 1981 s 28, Sch 3 applies to the compulsory acquisition under the Water Industry Act 1991 s 155(1) of rights by the creation of new rights: see s 155(4); and **WATER AND WATERWAYS** vol 101 (2009) PARA 453. Enactments relating to compensation and the Compulsory Purchase Act 1965 are modified by the Water Industry Act 1991 Sch 9 in relation to the compulsory acquisition under s 155(1) (see the text and note 3) of a right over land by the creation of a new right: see s 155(5); and **WATER AND WATERWAYS** vol 101 (2009) PARA 453. As to the meaning of 'enactment' see PARA 1013 note 7. As to the application of the Compulsory Purchase Act 1965 Pt I (ss 1-32) see the Water Industry Act 1991 s 155(6); and **WATER AND WATERWAYS** vol 101 (2009) PARA 459.

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1032. Restrictions on disposals of land.

A sewerage undertaker¹ may not dispose of any of its protected land², or of any interest or right in or over any of that land, except with the consent of, or in accordance with a general authorisation given by, the Secretary of State³, which may be given on such conditions as the Secretary of State considers appropriate⁴.

Where an undertaker is proposing to dispose of, or of any interest or right in or over, any of its protected land, it may enter into a covenant with the Secretary of State by virtue of which it accepts obligations in respect of freedom of access to the land and its use and management; and such covenants bind all persons deriving title from or under the undertaker and are enforceable by the Secretary of State⁵.

1 As to sewerage undertakers see PARA 999.

2 'Protected land', in relation to a company holding an appointment under the Water Industry Act 1991 Pt II Ch I (ss 6-17), means any land which, or any interest or right in or over which: (1) was transferred to that company in accordance with a scheme under the Water Act 1989 Sch 2 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 108) or, where that company is a statutory water company, was held by that company at any time during the financial year ending with 31 March 1990; (2) is or has at any time on or after 1 September 1989 been held by that company for purposes connected with the carrying out of its functions as a sewerage undertaker (including any functions which for the purposes for which the Water Industry Act 1991 s 218 has effect are taken to be such functions by virtue of s 218(6) or s 218(7) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 334)); or (3) has been transferred to that company in accordance with a scheme under the Water Act 1989 Sch 2 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 108) from another company in relation to which that land was protected land when the other company held an appointment under Pt II Ch I (s 219(1)). 'Financial year' means the 12 months ending with 31 March: s 219(1). As to the meaning of 'functions' see PARA 619 note 4.

3 See the Water Industry Act 1991 s 156(1); and **WATER AND WATERWAYS** vol 101 (2009) PARA 454. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

4 See the Water Industry Act 1991 s 156(2); and **WATER AND WATERWAYS** vol 101 (2009) PARA 454. There are provisions as to the form of a consent or authorisation (see s 156(3); and **WATER AND WATERWAYS** vol 100 (2009) PARA 354), and further provisions as to what the conditions of a consent or authorisation may include (see s 156(4), (5); and **WATER AND WATERWAYS** vol 101 (2009) PARA 454).

5 See the Water Industry Act 1991 s 156(6); and **WATER AND WATERWAYS** vol 101 (2009) PARA 454.

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1033. Power to sell minerals deriving from sewerage works.

A sewerage undertaker¹ may sell any materials which: (1) have been removed by that undertaker from any premises, including any street², when carrying out works under, or otherwise carrying into effect the provisions of, the relevant sewerage provisions³; and (2) are not before the end of three days from the date of their removal claimed by the owner⁴ and taken away by him⁵. Where a sewerage undertaker sells any materials, it must pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by the undertaker from him⁶.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'street' see PARA 1004 note 9.

3 Water Industry Act 1991 s 189(1)(a). As to the meaning of 'relevant sewerage provisions' see PARA 1027 note 5.

Section 189 is subject to any rights conferred by virtue of Sch 14 para 1 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 493), does not apply to refuse removed by a sewerage undertaker, and is not to be taken as prejudicing the determination of the rights and liabilities of a sewerage undertaker when exercising a power in any case to which the provisions of s 189(1), (2) do not apply: s 189(3). As to the acquisition of mineral rights by sewerage undertakers see s 188, Sch 14; and **WATER AND WATERWAYS** vol 101 (2009) PARA 492 et seq.

4 As to the meaning of 'owner' see PARA 1004 note 9.

5 **WATER AND WATERWAYS** vol 100 (2009) s 189(1)(b).

6 **WATER AND WATERWAYS** vol 100 (2009) s 189(2).

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1034. Precautions against accidents and nuisances.

The statutory provisions¹ as to precautions to be taken by persons executing works in streets in the exercise of a power conferred by any enactment apply in the case of a sewerage undertaker² exercising its powers³ for the construction of any sewer or drain⁴.

1 In the Highways Act 1980 s 174: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 295.

2 As to sewerage undertakers see PARA 999.

3 See PARA 1024 et seq.

4 See the Highways Act 1980 s 174; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 295. As to the meanings of 'sewer' and 'drain' see PARA 998.

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1035. Private street works.

The sewerage of a street is included in the street works¹ which may be executed in private streets² at the expense of the frontagers under the statutory provisions relating to the making up of private streets³; but once a sewer has been constructed under those provisions to the satisfaction of the relevant council it vests in the sewerage undertaker or highway authority⁴ and the sewerage undertaker or highway authority cannot again impose a liability in respect of it upon the frontagers⁵.

1 'Street works' means any works for the sewerage, levelling, paving, metalling, flagging, channelling and making good of a street, and includes the provision of proper means for lighting a street: see the Highways Act 1980 s 203(3); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 146.

2 As to the meaning of 'private street' see the Highways Act 1980 s 203(2); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 10.

3 I.e. under the Highways Act 1980 ss 205-218: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 146 et seq.

4 See PARA 890 et seq.

5 *Fulham Board of Works v Goodwin* (1876) 1 Ex D 400; *Bonella v Twickenham Local Board of Health* (1887) 20 QBD 63, CA; *Poole Corp'n v Blake* [1956] 1 QB 206, [1955] 3 All ER 409, DC.

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(iv) Alteration and Maintenance

1036. Closure or restriction of use of public sewer.

A sewerage undertaker¹ may discontinue and prohibit the use of any public sewer² which is vested in it³. Such a discontinuance or prohibition may be for all purposes, for the purpose of foul water drainage, or for the purpose of surface water drainage⁴. Before any person who is lawfully using the sewer for any purpose is deprived by the undertaker of the use of the sewer for that purpose, the undertaker must⁵: (1) provide a sewer which is equally effective for his use for that purpose⁶; and (2) at the undertaker's expense, carry out any work necessary to make that person's drains or sewers communicate with the sewer so provided⁷.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7.

3 Water Industry Act 1991 s 116(1). This provision is expressed to be subject to s 116(3) (see the text and notes 5-7): s 116(1). A sewerage undertaker must carry out its functions under s 116 so as not to create a nuisance: s 117(6). Nothing in s 116 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'functions' see PARA 1004 note 4. As to the meanings of 'sewer' and 'drain' see PARA 998. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4. It appears that when a sewer is discontinued, the space occupied by it reverts to the owner of the soil: see *Rolls v St George the Martyr, Southwark, Vestry* (1880) 14 ChD 785 at 797, CA, per James LJ.

4 Water Industry Act 1991 s 116(2). As to the meaning of 'surface water' see PARA 1018 note 3.

5 Water Industry Act 1991 s 116(3).

6 Water Industry Act 1991 s 116(3)(a). Any dispute arising under s 116(3)(a) between a sewerage undertaker and any other person as to the effectiveness of any sewer provided by the undertaker for that person's use may be referred to the Water Services Regulation Authority for determination under s 30A (see **WATER AND WATERWAYS** vol 100 (2009) PARA 131) by either party to the dispute: s 116(4) (added by the Competition and Service (Utilities) Act 1992 s 35(1), (12); and amended by the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

7 Water Industry Act 1991 s 116(3)(b).

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1037. Alteration of sewers.

Certain undertakers¹ may, after giving reasonable notice² to the sewerage undertaker³ concerned, at their own expense and on substituting an equivalent, take up, divert or alter the level of certain sewers, drains, culverts or other pipes⁴. An 'equivalent', in relation to any sewers, drains, culverts or pipes, means other sewers, drains, culverts or pipes which will be equally effectual and will entail no additional expense for the sewerage undertaker in question⁵. Any difference of opinion which arises under these provisions⁶ between a sewerage undertaker and any person as to whether any sewers, drains, culverts or pipes substituted or proposed to be substituted for sewers, drains, culverts or pipes of that undertaker are or will be equally effectual or entail or will entail additional expense for the sewerage undertaker, may, at the option of the party complaining, be referred to a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers⁷.

1 Ie the Environment Agency or the Civil Aviation Authority or any internal drainage board, dock undertakers, railway undertakers, airport operator or licence holder: Water Industry Act 1991 s 184(1) (amended by the Environment Act 1995 Sch 22 para 119; and SI 2001/4050). 'Airport operator' means the person who is the airport operator for the purposes of the Airports Act 1986 Pt V (ss 57-62) in relation to an airport to which Pt V applies (see **AIR LAW** vol 2 (2008) PARA 183); 'licence holder' means a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (see **AIR LAW** vol 2 (2008) PARA 139 et seq); and 'licence' is to be construed accordingly: Water Industry Act 1991 s 184(4) (amended by SI 2001/4050). As to the meaning of 'dock undertakers' see PARA 1004 note 9. As to the Environment Agency see PARA 68 et seq. As to the Civil Aviation Authority see **AIR LAW** vol 2 (2008) PARA 50 et seq. As to internal drainage boards see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq.

2 'Notice' means notice in writing: Water Industry Act 1991 s 219(1).

3 As to sewerage undertakers see PARA 999.

4 Water Industry Act 1991 s 184(1) (as amended: see note 1). The sewers, drains, culverts and other pipes mentioned in the text are those which: (1) are vested in the undertaker; and (2) pass under or interfere with, or interfere with the alteration or improvement of, as the case may be: (a) any watercourse or other works vested in or under the control of the Environment Agency or internal drainage board; (b) any property of the Civil Aviation Authority; (c) any river, canal towing path or works forming part of the undertaking of the dock undertakers; (d) the railway of the railway undertakers; (e) the airport in question; or (f) any property of a licence holder which is used by the licence holder for the purpose of carrying out activities authorised by the licence: s 184(1) (as so amended). As to the meanings of 'sewer' and 'drain' see PARA 998. As to the meaning of 'pipe' see PARA 998. As to the meaning of 'watercourse' see PARA 1004 note 4.

In relation to sewers not vested in sewerage undertakers see the Public Health Act 1936 s 330. Section 330 has ceased to apply in relation to sewers, drains, culverts or pipes vested in a sewerage undertaker: see the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 2. As to private sewers see PARA 1073 et seq. As to the powers of collegiate or other corporate bodies to divert or construct new sewers see the Public Health Act 1936 s 338.

5 Water Industry Act 1991 s 184(2).

6 Ie under the Water Industry Act 1991 s 184.

7 Water Industry Act 1991 s 184(3). As to the Institution of Civil Engineers see **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARA 220.

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1038. Charging for the provision of sewerage services.

A sewerage undertaker¹ is empowered to fix charges for any services² provided in the course of carrying out its functions³, including its trade effluent⁴ functions and to demand and recover charges so fixed from any persons to whom it provides services or in relation to whom it carries out trade effluent functions⁵. Charges may be fixed in accordance with a statutory scheme⁶ or in accordance with agreements with the persons to be charged⁷. A charges scheme, which has effect in relation to a specified period of 12 months, may do one or more of the following⁸:

- 2248 (1) fix the charges to be paid for any services provided by the undertaker in the course of carrying out its functions⁹;
- 2249 (2) in the case of a sewerage undertaker, require such charges as may be fixed by the scheme to be paid to the undertaker where, in the circumstances set out in the scheme: (a) a notice¹⁰ containing an application for consent is served on the undertaker¹¹; (b) such a consent as is necessary in connection with trade effluent is given¹²; or (c) a discharge is made pursuant to such consent¹³; and
- 2250 (3) make provision with respect to the times and methods of payment of the charges fixed by the scheme¹⁴.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'services' see PARA 1020 note 3.

3 As to the meaning of 'functions' see PARA 1004 note 4.

4 As to the meaning of 'trade effluent' see PARA 1047 note 3.

5 See the Water Industry Act 1991 s 142(1); and **WATER AND WATERWAYS** vol 100 (2009) PARA 419. See also *Ministry of Defence v Thames Water Utilities Ltd* [2006] EWCA Civ 1620, [2006] All ER (D) 391 (Nov).

6 I.e. a charges scheme under the Water Industry Act 1991 s 143: see the text and notes 8-14; and **WATER AND WATERWAYS** vol 100 (2009) PARA 421.

7 See the Water Industry Act 1991 s 142(2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 419. The powers under s 142 must not be exercised in contravention of any local statutory provision which expressly provides that no charge may be made for a particular service: see s 142(5); and **WATER AND WATERWAYS** vol 100 (2009) PARA 419. As to the meaning of 'local statutory provision' see PARA 1020 note 5. As to the meaning of 'contravention' see PARA 1004 note 4.

8 See the Water Industry Act 1991 s 143(1) (amended by the Water Industry Act 1999 s 4(1), (2)). See also **WATER AND WATERWAYS** vol 100 (2009) PARA 421. The provisions of any charges scheme under the Water Industry Act 1991 s 143 must comply with any requirements prescribed by the Secretary of State by regulations: see s 143A; and **WATER AND WATERWAYS** vol 100 (2009) PARA 421. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

As to the liability of occupiers for charges see s 144; and **WATER AND WATERWAYS** vol 100 (2009) PARA 422. Sewerage services provided by a sewerage undertaker are treated for the purposes of Pt V Ch I (ss 142-150B) as provided to the occupiers for the time being of any premises which: (1) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with such a public sewer of the undertaker as is provided for foul water or surface water or both; or (2) are premises the occupiers of which have, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting: s 144(1) (b). As to the meaning of 'sewerage services' see PARA 1014 note 9. As to the meanings of 'sewer' and 'drain' see PARA 998. As to the meaning of 'public sewer' see PARA 1000. As to the right of the consumer to elect for

charging by reference to volume see s 144A; and **WATER AND WATERWAYS** vol 100 (2009) PARA 427. As to the restriction on the sewerage undertaker's power to require fixing of charges by reference to volume see s 144B; and **WATER AND WATERWAYS** vol 100 (2009) PARA 428.

9 Water Industry Act 1991 s 143(1)(a). See also **WATER AND WATERWAYS** vol 100 (2009) PARA 421.

10 As to the meaning of 'notice' see PARA 1037 note 2.

11 Ie under the Water Industry Act 1991 s 119: see PARA 1047.

12 Ie under the Water Industry Act 1991 Pt IV Ch III (ss 118-141).

13 Water Industry Act 1991 s 143(1)(b). The persons who may be required by a charges scheme to pay any charge fixed by virtue of s 143(1)(b) are: the person who serves the notice, the person to whom the consent is given or, as the case may be, any person who makes a discharge in pursuance of the consent at any time during the period to which, in accordance with the scheme, the charge relates: s 143(2). A charges scheme which requires the payment of charges where a discharge has been made in pursuance of such a consent as is mentioned in s 143(1)(b) may impose: (1) a single charge in respect of the whole period for which the consent is in force; (2) separate charges in respect of different parts of that period; or (3) both such a single charge and such separate charges: s 143(3). A sewerage undertaker is under a duty to ensure that any charges scheme made by the undertaker, so far as having effect to recover the undertaker's costs of providing a sewer by virtue of its duty under s 101A(1) (see PARA 1021), causes those costs to be borne by the undertaker's customers generally: s 143(3A) (added by the Environment Act 1995 Sch 22 para 115). A sewerage undertaker's duty under the Water Industry Act 1991 s 143(3A) is enforceable under s 18 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 163) by the Secretary of State or, with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Water Services Regulation Authority: s 143(3A) (as so added; and amended by the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

14 See the Water Industry Act 1991 s 143(1)(c); and **WATER AND WATERWAYS** vol 100 (2009) PARA 421.

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1039. Connection charges and charges for highway drainage.

A sewerage undertaker¹ is not entitled to fix, demand, or recover an initial charge for its becoming, or for its taking the steps to becoming, the person who provides sewerage services² for the purposes of the drainage for domestic sewerage purposes of any premises³. However, it is not prohibited from fixing, demanding or recovering a charge for the connection to a public sewer⁴ of premises which have never at any previous time been connected to a sewer used for the drainage for domestic sewerage purposes of those premises by a sewerage undertaker or by any other authority or body which at that time provided sewerage services in the course of carrying out functions⁵ under any enactment⁶.

A sewerage undertaker is not authorised⁷ to require any payment to be made to the undertaker in respect of the making by the undertaker of any declaration of vesting⁸ or in respect of any agreement to make such a declaration⁹, nor is it authorised¹⁰ to require any payment to be made to the undertaker by a highway authority¹¹ in respect of the drainage of any highway¹² or the disposal of the contents of any drain or sewer¹³ used for draining any highway¹⁴.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'sewerage services' see PARA 1014 note 9.

3 See the Water Industry Act 1991 s 146(1); and **WATER AND WATERWAYS** vol 100 (2009) PARA 420. As to the meaning of 'domestic sewerage purposes' see PARA 1018 note 3; definition applied by s 146(6).

4 As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7.

5 As to the meaning of 'functions' see PARA 1004 note 4.

6 See the Water Industry Act 1991 s 146(2)(b); and **WATER AND WATERWAYS** vol 100 (2009) PARA 420. As to the meaning of 'enactment' see PARA 1013 note 7.

7 Ie by the Water Industry Act 1991 Pt V Ch I (ss 142-150B) or any other enactment or the terms of any agreement under s 104: see PARA 1006.

8 Ie under the Water Industry Act 1991 Pt IV Ch II (ss 98-117).

9 Water Industry Act 1991 s 146(3). See also **WATER AND WATERWAYS** vol 100 (2009) PARA 420.

10 Ie by the Water Industry Act 1991 Pt V Ch I or any other enactment.

11 As to the meaning of 'highway authority' see PARA 1003 note 10.

12 As to the meaning of 'highway' see PARA 1004 note 9.

13 As to the meanings of 'sewer' and 'drain' see PARA 998.

14 Water Industry Act 1991 s 146(4). See also **WATER AND WATERWAYS** vol 100 (2009) PARA 420.

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1040. Charging by volume.

The Secretary of State¹ may by regulations² make provision with respect to the installation of meters³, with respect to the connection, disconnection, use, maintenance, authentication and testing of meters and with respect to any related matters⁴. Where any meter capable of being used in determining the amount of any charges is installed at the request of a sewerage undertaker⁵, the undertaker must bear the expenses of installing, connecting, maintaining, repairing, disconnecting or removing the meter⁶. Disputes as to expenses are referred to the arbitration of a single arbitrator appointed by agreement between the parties or, in default of agreement, by the Water Services Regulation Authority⁷. Where an undertaker has fixed charges in relation to any premises by volume⁸, and has given notice⁹ of its intention to fix charges and there is a drain or private sewer¹⁰ connecting those premises with a public sewer¹¹, the undertaker may do works of installation, connection, maintenance, repair, disconnection or removal of any meter, pipes or apparatus installed for use in determining the amount of any charges which have been or may be fixed in relation to the premises¹². In these circumstances, a designated person may enter the premises or any land occupied with them for specified purposes¹³. It is an offence to tamper with a meter, although not in relation to anything done with the appropriate consent¹⁴.

1 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

2 At the date at which this volume states the law no such regulations had been made under the Water Industry Act 1991 s 149 but, by virtue of the Water Act 1989 s 190(2), Sch 26 para 16(6) (repealed) and the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 Pt I para 1(1), (2), the Water (Meters) Regulations 1988, SI 1988/1048 (amended by SI 1988/1288) have effect as if so made.

3 'Meter' means any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises: Water Industry Act 1991 s 219(1). As to the meaning of 'effluent' see PARA 1003 note 2.

4 See the Water Industry Act 1991 s 149(1); and **WATER AND WATERWAYS** vol 100 (2009) PARA 425.

5 As to sewerage undertakers see PARA 999.

6 See the Water Industry Act 1991 s 148(1) (amended by the Water Industry Act 1999 Sch 3 Pt I para 1); and **WATER AND WATERWAYS** vol 100 (2009) PARA 436. The Water Industry Act 1991 s 148(1) does not require a sewerage undertaker to bear, or prevent any such undertaker from recovering from any other person, any expenses incurred in relation to a meter which is or is to be used in determining the amount of: (1) any charges which are to be paid in connection with the carrying out of a sewerage undertaker's functions under Pt IV Ch III (ss 118-141) (see PARA 1047 et seq); or (2) any charges provision for which is contained in an agreement entered into in accordance with s 129 (see PARA 1053): s 148(2)(d). See also **WATER AND WATERWAYS** vol 100 (2009) PARA 436. As to the meaning of 'functions' see PARA 1004 note 4. In addition, s 148(1) does not require a sewerage undertaker to bear, or prevent any such undertaker from recovering from any other person, in the case of premises which do not consist of or include any building or part of a building which is occupied as a private dwelling-house, any expenses incurred in consequence of the exercise by the consumer of any option to be charged by the undertaker in relation to those premises by reference to volume rather than by reference to other matters: s 148(2)(e) (substituted by the Water Industry Act 1999 s 9(b)). The occupier of any premises where a sewerage undertaker installs or has installed a meter must also bear so much of the expenses referred to in the Water Industry Act 1991 s 148(1) as is attributable to compliance with a request made by him for the positioning, in a place other than that reasonably proposed by the undertaker, either of the meter or of any pipe or apparatus installed for the purpose of facilitating the use of the meter: see s 148(4); and **WATER AND WATERWAYS** vol 100 (2009) PARA 436. As to the meaning of 'pipe' see PARA 998.

7 See the Water Industry Act 1991 s 148(5); and **WATER AND WATERWAYS** vol 100 (2009) PARA 445. As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

8 References in the Water Industry Act 1991 to the fixing of charges in relation to any premises by reference to volume are references to the fixing of those charges by reference to the volume of water supplied to those premises, to the volume of effluent discharged from those premises, to both of those factors, or to one or both of those factors taken together with other factors: s 219(4).

9 As to the meaning of 'notice' see PARA 1037 note 2.

10 As to the meaning of 'drain' see PARA 998. As to the meaning of 'private sewer' see PARA 1000 note 4.

11 As to the meaning of 'public sewer' see PARA 1000.

12 See the Water Industry Act 1991 s 162(1), (2), (3); and **WATER AND WATERWAYS** vol 100 (2009) PARA 433. As to notices of entry, warrants, production of evidence of designation by designated persons, supplementary powers, the duty to secure premises after entry, compensation and obstruction see s 162, Sch 6 Pt II; and **WATER AND WATERWAYS** vol 101 (2009) PARA 482 et seq.

13 See the Water Industry Act 1991 s 172(1); and **WATER AND WATERWAYS** vol 100 (2009) PARA 434. As to the specified purposes s 172(2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 434.

14 See the Water Industry Act 1991 s 175; and **WATER AND WATERWAYS** vol 100 (2009) PARA 442. The 'appropriate consent' for these purposes is that of the undertaker. The offence is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: see s 175; and **WATER AND WATERWAYS** vol 100 (2009) PARA 442. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the consent of the undertaker see s 176; and **WATER AND WATERWAYS** vol 100 (2009) PARA 442. An undertaker may recover the expenses of works made necessary by the commission of an offence under s 175: see s 177(1); and **WATER AND WATERWAYS** vol 100 (2009) PARA 442. Compensation is payable by the undertaker to anyone sustaining loss or damage as a result of a failure by an undertaker to comply with its obligation under s 176: see s 177(2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 442.

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(v) Drainage into Public Sewers

1041. Right to drain into public sewers.

The owner¹ or occupier of any premises, or the owner of any private sewer² which drains premises, is entitled to have his drains or sewer³ communicate with the public sewer⁴ of any sewerage undertaker⁵, and thereby to discharge foul water and surface water⁶ from the premises or that private sewer⁷. However, subject to certain provisions⁸, this does not entitle any person⁹:

- 2251 (1) to discharge directly or indirectly into any public sewer: (a) any liquid from a factory¹⁰, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process¹¹; or (b) any liquid or other matter the discharge of which into public sewers is prohibited by or under any enactment¹²;
- 2252 (2) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly, foul water into a sewer provided for surface water or, except with the approval of the sewerage undertaker, surface water into a sewer provided for foul water¹³; or
- 2253 (3) to have his drains or sewer made to communicate directly with a storm-water overflow sewer¹⁴.

1 As to the meaning of 'owner' see PARA 1004 note 9.

2 As to the meaning of 'private sewer' see PARA 1000 note 4.

3 As to the meanings of 'drain' and 'sewer' see PARA 998.

4 As to the meaning of 'public sewer' see PARA 1000. See also note 7.

5 As to sewerage undertakers see PARA 999.

6 As to the meaning of 'surface water' see PARA 1018 note 3.

7 Water Industry Act 1991 s 106(1) (substituted by the Competition and Service (Utilities) Act 1992 s 35(8), 43(2)). See *Barratt Homes Ltd v DWR Cymru Cyfygedig (Welsh Water)* [2009] UKSC 13, [2009] All ER (D) 80 (Dec); and PARA 1042.

In the Water Industry Act 1991 ss 106-109, 111, 113-116, 118, 119, 124, 127, 139, 146: (1) references (however expressed) to a public sewer include a public lateral drain which satisfies sewer standards; and (2) for the purposes of head (1) above (a) a 'public lateral drain' is a lateral drain which either belongs to the sewerage undertaker or is vested in the sewerage undertaker by virtue of a declaration made under s 102 (see PARA 1004) or under an agreement made under s 104 (see PARA 1006); and (b) 'sewer standards' means such standards of construction and repair as the undertaker would require if the public lateral drain or part of it were to become a public sewer: s 106(1A) (added by the Water Act 2003 s 99(1), (2)). As to the meaning of 'lateral drain' see PARA 1003 note 2.

Nothing in the Water Industry Act 1991 s 106 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (i) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (ii) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'functions' see PARA 1004 note 4. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4.

As to the grounds on which permission may be refused see PARA 1042. As to the requirements of building regulations generally see **BUILDING**.

8 le the Water Industry Act 1991 Pt IV Ch III (118-141): see PARA 1047 et seq. As to the right of occupiers of trade premises to discharge trade effluent into public sewers see PARA 1047.

9 Water Industry Act 1991 s 106(2).

10 'Factory' has the same meaning as in the Factories Act 1961 (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 318): Water Industry Act 1991 s 106(9).

11 Water Industry Act 1991 s 106(2)(a)(i).

12 Water Industry Act 1991 s 106(2)(a)(ii). As to the meaning of 'enactment' see PARA 1013 note 7.

13 Water Industry Act 1991 s 106(2)(b).

14 Water Industry Act 1991 s 106(2)(c).

UPDATE

1041 Right to drain into public sewers

NOTE 7--*Barratt Homes*, cited, reported at [2010] PTSR 651.

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1042. Exercise of right to drain into public sewer.

A person desirous of availing himself of his entitlement to have his drains or sewer¹ communicate with the public sewer² must give notice³ of his proposals to the sewerage undertaker in question⁴. At any time within 21 days after a sewerage undertaker receives such a notice, the undertaker may, by notice to the person who gave the notice of proposals⁵, refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer does not satisfy the standards reasonably required by the undertaker, or is such that the making of the communication would be prejudicial to the undertaker's sewerage system⁶. For the purpose of examining the mode of construction and condition of a drain or sewer to which a notice of proposals relates, a sewerage undertaker may, if necessary, require it to be laid open for inspection⁷. Any question arising⁸ between a sewerage undertaker and a person proposing to make a communication as to the reasonableness of the undertaker's refusal to permit a communication to be made or as to the reasonableness of certain requirements⁹ may, on the application of that person to make the communication, be determined by the Water Services Regulation Authority¹⁰.

Any person who causes a drain or sewer to communicate with a public sewer in contravention of certain provisions¹¹, or before the end of the 21 day period after a sewerage undertaker receives a notice of proposals from a person desirous of availing himself of his entitlement to have his drains or sewer communicate with a public sewer¹², is guilty of an offence and liable on summary conviction to a penalty¹³.

1 As to the meanings of 'drain' and 'sewer' see PARA 998.

2 I.e. the entitlement under the Water Industry Act 1991 s 106(1): see PARA 1041. As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7.

3 As to the meaning of 'notice' see PARA 1037 note 2.

4 Water Industry Act 1991 s 106(3). As to sewerage undertakers see PARA 999.

5 I.e. a notice under the Water Industry Act 1991 s 106(3): see the text and note 4.

6 Water Industry Act 1991 s 106(4) (amended by the Water Act 2003 s 99(1), (3)). As to references to the construction of a sewer see PARA 1004 note 10. See also *Smeaton v Ilford Corp* [1954] Ch 450, [1954] 1 All ER 923.

Where the sewer or drain satisfies the standards reasonably required by it, a sewerage undertaker may, as a condition of permitting the communication to be made, require that the sewer or that part of the drain forming the lateral drain be vested in it by virtue of a declaration under the Water Industry Act 1991 s 102 (see PARA 1004): s 106(5A) (added by the Water Act 2003 s 99(1), (4)).

The Water Industry Act 1991 s 106 conferred no express right on a sewerage undertaker to select the point of connection of a private drain or sewer with a public sewer or to refuse permission to make the communication on the ground that the point of connection proposed by the developer was open to objection: see *Barratt Homes Ltd v DWR Cymru Cyfygedig (Welsh Water)* [2009] UKSC 13, [2009] All ER (D) 80 (Dec).

7 Water Industry Act 1991 s 106(5).

8 I.e. under the Water Industry Act 1991 s 106(3)-(5A): see the text and notes 4-7.

9 I.e. under the Water Industry Act 1991 s 106(5) or s 106(5A): see the text and notes 6, 7.

10 Water Industry Act 1991 s 106(6) (amended by the Competition and Service (Utilities) Act 1992 s 35(1), (8); and the Water Act 2003 ss 36(2), 99(1), (5)). Accordingly the Water Industry Act 1991 s 105 (see PARAS 1005, 1007) does not apply to any requirement under s 106(5A) (see note 6): see s 106(6) (as so amended). As to the determination see s 30A; and **WATER AND WATERWAYS** vol 100 (2009) PARA 131. As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

Where a person proposes under s 106 to make a communication between a drain or sewer and such a public sewer in Greater London as is used for the general reception of sewage from other public sewers and is not substantially used for the reception of sewage from private sewers and drains: (1) the grounds on which a sewerage undertaker may refuse to permit the communication are such grounds as the undertaker thinks fit; and (2) no application to the Authority may be made under s 106(6) in respect of any refusal under s 106(8): see s 106(8) (amended by the Competition and Service (Utilities) Act 1992 s 35(1), (8); and the Water Act 2003 s 36(2)).

11 Ie the Water Industry Act 1991 s 106 (see the text and notes 1-10; and PARA 1041) and s 108 (see PARA 1044). As to the meaning of 'contravention' see PARA 1004 note 4.

12 Ie the period mentioned in the Water Industry Act 1991 s 106(4): see the text and note 6.

13 Water Industry Act 1991 s 109(1). The penalty is a fine not exceeding level 4 on the standard scale: s 109(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Whether proceedings have or have not been taken by a sewerage undertaker in respect of an offence under s 109, that undertaker may close any communication made in contravention of any of the provisions of s 106 (see the text and notes 1-10; and PARA 1041) or s 108 (see PARA 1044), and recover from the offender any expenses reasonably incurred by the undertaker in so doing: s 109(2). The Public Health Act 1936 ss 291, 293, 294 (see PARAS 122-123) apply in relation to the recovery by a sewerage undertaker of any sums under the Water Industry Act 1991 s 109 as they apply in relation to the recovery of expenses under the Public Health Act 1936 by a local authority: Water Industry Act 1991 s 109(3). As to the meaning of 'local authority' see PARA 99. As to the prosecution of offences see PARA 128. As to the recovery of expenses see PARA 122.

Nothing in s 109 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'watercourse' see PARA 1004 note 4.

UPDATE

1042 Exercise of right to drain into public sewer

NOTE 6--*Barratt Homes*, cited, reported at [2010] PTSR 651.

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1043. Right of sewerage undertaker to undertake the making of communications with public sewers.

Where a person gives to a sewerage undertaker¹ notice of his proposal to have his drains or sewer made to communicate with a public sewer of that undertaker², the undertaker may give notice to that person that the undertaker intends itself to make the communication³. If, after such a notice has been given to any person, that person proceeds himself to make the communication, he is guilty of an offence and liable on summary conviction to a penalty⁴.

Where a sewerage undertaker has given such a notice⁵, the undertaker has all such rights in respect of the making of the communication as the person desiring it to be made would have⁶, but it is not obligatory on the undertaker to make the communication until either⁷: (1) there has been paid to the sewerage undertaker any such sum, not exceeding the undertaker's reasonable estimate of the cost of the work, as the undertaker may have required to be paid to it⁸; or (2) there has been given to the undertaker such security for the payment of the cost of the work as it may reasonably have required⁹.

1 As to sewerage undertakers see PARA 999.

2 I.e. a notice under the Water Industry Act 1991 s 106: see PARAS 1041-1042. As to the meaning of 'notice' see PARA 1037 note 2. As to the meanings of 'drain' and 'sewer' see PARA 998. As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7.

3 Water Industry Act 1991 s 107(1) (amended by the Competition and Service (Utilities) Act 1992 s 35(1), (9)). The undertaker may give such a notice within 14 days after the receipt of the notice of proposals or, if any question arising under the notice requires to be determined by the Water Services Regulation Authority, within 14 days after the determination of that question: Water Industry Act 1991 s 107(1) (as so amended; and further amended by the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq. The making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street: Water Industry Act 1991 s 107(6). As to the meaning of 'street' see PARA 1004 note 9.

Nothing in s 107 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'functions' see PARA 1004 note 4. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4.

4 Water Industry Act 1991 s 107(2). The penalty is a fine not exceeding level 4 on the standard scale: s 107(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

5 I.e. a notice under the Water Industry Act 1991 s 107(1): see the text and notes 1-3.

6 Water Industry Act 1991 s 107(3)(a).

7 Water Industry Act 1991 s 107(3)(b).

8 Water Industry Act 1991 s 107(3)(b)(i). As to disputes as to whether the undertaker's estimate is reasonable see note 9.

9 Water Industry Act 1991 s 107(3)(b)(ii). If any payment made to a sewerage undertaker under s 107(3) exceeds the expenses reasonably incurred by it in the carrying out of the work in question, the excess must be repaid by the undertaker; and, if and so far as those expenses are not covered by such a payment, the undertaker may recover the expenses, or the balance of them, from the person for whom the work was done: s 107(4). Any dispute between a sewerage undertaker and any other person as to: (1) whether the undertaker's estimate of the cost of works given under s 107(3)(b)(i) (see the text and note 8) is reasonable; (2) whether any requirement of security for the payment of the cost of works was reasonably made by the undertaker; or (3) whether any excess is repayable or any expenses are recoverable by the undertaker under s 107(4), or the amount of any such excess or expenses, may be referred to the Authority for determination under s 30A (see **WATER AND WATERWAYS** vol 100 (2009) PARA 131) by either party to the dispute: s 107(4A) (added by the Competition and Service (Utilities) Act 1992 s 35(1), (9); and amended by the Water Act 2003 s 36(2)). The Public Health Act 1936 ss 291, 293, 294 (see PARAS 122-123) apply in relation to the recovery by a sewerage undertaker of any sums under the Water Industry Act 1991 s 107 as they apply in relation to the recovery of expenses under the Public Health Act 1936 by a local authority: Water Industry Act 1991 s 107(5). As to the meaning of 'local authority' see PARA 99.

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1044. Communication works by person entitled to communication.

Where a sewerage undertaker¹ does not elect itself² to make a communication to which a person is entitled³, the person making it must⁴: (1) before commencing the work, give reasonable notice⁵ to any person directed by the undertaker to superintend the carrying out of the work⁶; and (2) afford any such person all reasonable facilities for superintending the carrying out of the work⁷. For the purpose of exercising his rights to have his drains or sewer communicate with the public sewer⁸, or of examining, repairing or renewing any drain or private sewer⁹ draining his premises into a public sewer, the owner¹⁰ or occupier of any premises is entitled to exercise the same powers as, for the purpose of carrying out its functions, are conferred on a sewerage undertaker to lay pipes in streets¹¹ and to deal with foul water and pollution¹².

1 As to sewerage undertakers see PARA 999.

2 Ie under the Water Industry Act 1991 s 107: see PARA 1043.

3 Ie under the Water Industry Act 1991 s 106: see PARAS 1041-1042.

4 Water Industry Act 1991 s 108(1). Nothing in s 108 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'functions' see PARA 1004 note 4. As to the meanings of 'sewer' and 'drain' see PARA 998. As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4.

5 As to the meaning of 'notice' see PARA 1037 note 2.

6 Water Industry Act 1991 s 108(1)(a).

7 Water Industry Act 1991 s 108(1)(b).

8 Ie under the Water Industry Act 1991 s 106: see PARAS 1041-1042.

9 As to the meaning of 'private sewer' see PARA 1000 note 4.

10 As to the meaning of 'owner' see PARA 1004 note 9.

11 Ie the power under the Water Industry Act 1991 s 158: see PARA 1024; and **WATER AND WATERWAYS** vol 101 (2009) PARA 462.

12 Water Industry Act 1991 s 108(2). The power to deal with foul water and pollution is the power under s 161(1) (see PARA 329): see s 108(2). The provisions of Pt VI (ss 155-173) apply, with the necessary modifications, in relation to the power conferred by s 108(2) as they apply in relation to the power conferred by s 158 (see PARA 1024; and **WATER AND WATERWAYS** vol 101 (2009) PARA 462) and s 161(1) (see PARA 329): s 108(3). As to the meaning of 'modifications' see PARA 1007 note 10.

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1045. Nuisance.

A person unlawfully making a connection with a sewer¹ is liable to other persons injured by a nuisance due to the sewer discharging the sewage from his drain, and may be restrained by injunction². However, if the communication has been made with the sanction or acquiescence of the sewerage undertaker³, or if the right to discharge into the sewer has been acquired by prescription, he cannot be cut off by the undertaker until some new arrangement is made, even though the discharge from the sewer may be causing a nuisance⁴.

1 As to connections with a sewer see PARAS 1041-1044.

2 *Kinson Pottery Co v Poole Corpn* [1899] 2 QB 41, DC; *Graham v Wroughton* [1901] 2 Ch 451, CA. See also *Charles v Finchley Local Board* (1883) 23 ChD 767.

3 As to sewerage undertakers see PARA 999.

4 *Clegg v Castleford Local Board* [1874] WN 229; *A-G v Dorking Union Guardians* (1882) 20 ChD 595, CA; *A-G v Acton Local Board* (1882) 22 ChD 221; *Ainley v Kirkheaton Local Board* (1891) 60 LJ Ch 734; *A-G v Clerkenwell Vestry* [1891] 3 Ch 527; *Ogilvie v Blything Union Rural Sanitary Authority* (1891) 65 LT 388 (affd (1892) 67 LT 18, CA); *Brown v Dunstable Corpn* [1899] 2 Ch 378; *Earl of Harrington v Derby Corpn* [1905] 1 Ch 205; *East Barnet Valley UDC v Stallard* [1909] 2 Ch 555, CA. Cf *Charles v Finchley Local Board* (1883) 23 ChD 767; but see *Brown v Dunstable Corpn* above at 389 per Cozens-Hardy J.

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1046. Use of public sewers for road drainage.

A relevant authority¹ and a sewerage undertaker² may agree that³: (1) any drain or sewer which is vested in the authority in its capacity as a highway authority⁴ may, upon such terms as may be agreed, be used by the undertaker for the purpose of conveying surface water⁵ from premises or streets⁶; (2) any public sewer vested in the undertaker may, upon such terms as may be agreed, be used by the authority for conveying surface water from roads repairable by the authority⁷.

Where a sewer or drain with respect to which a relevant authority and a sewerage undertaker propose to make such an agreement discharges, whether directly or indirectly, into the sewers or sewage disposal works⁸ of another sewerage undertaker, the agreement must not be made without the consent of that other undertaker⁹. Such a consent given by a sewerage undertaker may be given on such terms as that undertaker thinks fit¹⁰. Neither a relevant authority nor a sewerage undertaker may unreasonably refuse to enter into an agreement or insist unreasonably upon terms unacceptable to the other party, and a sewerage undertaker must not unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms unacceptable to either party¹¹. Any question arising as to whether or not any authority or undertaker is acting unreasonably may be referred to the Secretary of State¹², whose decision is final¹³.

1 'Relevant authority' means a county council or any local authority except a non-metropolitan district council: Water Industry Act 1991 s 115(9). As to the meaning of 'local authority' see PARA 99. The Public Health Act 1936 Pt XII (ss 275-347) applies for the purposes of the provisions of the Water Industry Act 1991 s 115 which confer functions on relevant authorities as it applies for the purposes of the provisions of the Public Health Act 1936: Water Industry Act 1991 s 115(8). As to the meaning of 'functions' see PARA 1004 note 4.

2 As to sewerage undertakers see PARA 999.

3 Water Industry Act 1991 s 115(1). The provisions of s 115 are subject to the provisions of s 146(4) (see PARA 1039): s 115(10). Nothing in s 115 is to be construed as limiting the rights of a relevant authority under the Highways Act 1980 s 264 (vesting of drains etc of certain roads) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 226): Water Industry Act 1991 s 115(7). A sewerage undertaker must carry out its functions under s 115 so as not to create a nuisance: s 117(6). Nothing in s 115 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meanings of 'sewer' and 'drain' see PARA 998. As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4.

4 As to the meaning of 'highway authority' see PARA 1003 note 10.

5 As to the meaning of 'surface water' see PARA 1018 note 3.

6 Water Industry Act 1991 s 115(1)(a). As to the meaning of 'street' see PARA 1004 note 9. The power of a relevant authority and a sewerage undertaker to enter into an agreement under s 115(1)(a) is exercisable by two relevant authorities as it would be exercisable if one of them were a sewerage undertaker: s 115(6).

7 Water Industry Act 1991 s 115(1)(b). As to roads repairable by a county council see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 257 et seq.

8 As to the meaning of 'sewage disposal works' see PARA 998.

9 Water Industry Act 1991 s 115(2).

10 Water Industry Act 1991 s 115(3). This is expressed to be subject to s 115(4) (see the text and note 11): see s 115(3).

11 Water Industry Act 1991 s 115(4).

12 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

13 Water Industry Act 1991 s 115(5).

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(vi) Trade Effluent and Special Category Effluent

A. TRADE EFFLUENT

1047. Discharge of trade effluent into public sewers.

The occupier of any trade premises¹ in the area of a sewerage undertaker² may discharge any trade effluent³ proceeding from those premises into the undertaker's public sewers if he does so with the undertaker's consent⁴. An application to a sewerage undertaker for such a consent to discharge trade effluent must be by notice⁵ served on the undertaker by the owner⁶ or occupier of the premises⁷. Such an application with respect to a proposed discharge of any such effluent must state the nature or composition of the trade effluent, the maximum quantity of the trade effluent which it is proposed to discharge on any one day, and the highest rate at which it is proposed to discharge the trade effluent⁸.

If, in the case of any trade premises, any trade effluent is discharged without such consent or other authorisation as is necessary⁹, the occupier of the premises is guilty of an offence and liable to a penalty¹⁰.

1 'Trade premises' means any premises used or intended to be used for carrying on any trade or industry: Water Industry Act 1991 s 141(1). For the purposes of Pt IV Ch III (ss 118-141), any land or premises used or intended for use (in whole or in part and whether or not for profit) for agricultural or horticultural purposes or for the purposes of fish farming, or for scientific research or experiment are deemed to be premises used for carrying on a trade or industry: s 142(2).

2 As to sewerage undertakers see PARA 999.

3 For the purposes of the Water Industry Act 1991 Pt IV Ch III, 'trade effluent': (1) means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises; and (2) in relation to any trade premises, means any such liquid which is so produced in the course of any trade or industry carried on at those premises, but does not include domestic sewage: s 141(1). References to a trade or industry in the definition of 'trade effluent' in s 141(1) include references to agriculture, horticulture, fish farming and scientific research or experiment: s 142(2).

See also *Yorkshire Dyeing and Proofing Co Ltd v Middleton Borough Council* [1953] 1 All ER 540, [1953] 1 WLR 393, DC (effluent discharging from other premises). See further *Thames Water Authority v Blue and White Launderettes Ltd* [1980] 1 WLR 700, 124 Sol Jo 100, CA, where it was held that domestic sewage was related to household or domestic activities carried on at trade premises as distinct from business activities, and that washing machines in a launderette were part of the business activity. No account may be taken for these purposes of any radioactivity possessed by any substance or article or by any part of any premises: see the Radioactive Substances Act 1993 s 40(1), (2), Sch 3 para 8; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1463 et seq.

The Secretary of State may by order provide that, subject to the Water Industry Act 1991 s 138(5) (prospectively repealed) (see PARA 1059), Pt IV Ch III is to apply in relation to liquid or other matter of any description specified in the order which is discharged into public sewers as it applies in relation to trade effluent: s 139(1). Such orders, being local in nature, are not set out in this work. An order applying the provisions of Pt IV Ch III in relation to liquid or other matter of any description may provide for it to so apply subject to such modifications (if any) as may be specified in the order and, in particular, subject to any such modification of the meaning for the purposes of Pt IV Ch III of the expression 'trade premises' (see note 1) as may be so specified: s 139(2). The Secretary of State may include in an order under s 139 such provisions as appear to him expedient for modifying any enactment relating to sewage as that enactment applies in relation

to the discharge into sewers of any liquid or other matter to which any provisions of Pt IV Ch III are applied by an order under s 139: s 139(3). The Secretary of State may include in an order under s 139 such other supplemental, incidental and transitional provision as appears to him to be expedient: s 139(4). The power to make an order under s 139 is exercisable by statutory instrument, and no order may be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament: s 139(5). As to the meaning of 'modifications' see PARA 1007 note 10. As to the meaning of 'enactment' see PARA 1013 note 7. As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7. As to the meaning of 'sewer' see PARA 998. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. As from a day to be appointed, s 139 is substituted by the Water Act 2003 s 105(3), (5). At the date at which this volume states the law no such day had been appointed.

4 Water Industry Act 1991 s 118(1). This is expressed to be subject to Pt IV Ch III: s 118(1). As to when consent is unnecessary see PARA 1051. Nothing in Pt IV Ch III authorises the discharge of any effluent into a public sewer otherwise than by means of a drain or sewer: s 118(2). Section 111(1)(a), (b) (see PARA 1068), and the restrictions imposed by s 106(2)(a), (b) (see PARA 1041) do not apply to any discharge of trade effluent which is lawfully made by virtue of Pt IV Ch III: s 141(3). Section 106(3)-(6), (8) (see PARA 1042), s 108 (see PARA 1044) and s 109 (see PARA 1042) have effect in relation to communication with a sewer for the purpose of making any discharge which is lawfully made by virtue of Pt IV Ch III as they have effect in relation to communication with a sewer for the purpose of making discharges which are authorised by s 106(1) (see PARA 1041): s 118(4). As to the meaning of 'drain' see PARA 998.

It is the duty of every sewerage undertaker, the Water Services Regulation Authority, and the Secretary of State, in exercising their functions under Pt IV Ch III with respect to any discharge of industrial waste water, to secure that the requirements of the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 7, Sch 4 are met in respect of that discharge: reg 7(1) (amended by SI 2005/2035). The Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, Sch 4 provides that industrial waste water entering collecting systems and urban waste water treatment plants are to be subject to such pre-treatment as is required in order to: (1) protect the health of staff working in collecting systems and treatment plants; (2) ensure that collecting systems, waste water treatment plants and associated equipment are not damaged; (3) ensure that the operation of the waste water treatment plant and the treatment of sludge are not impeded; (4) ensure that discharges from the treatment plants do not adversely affect the environment, or prevent receiving water from complying with other Community Directives; (5) ensure that sludge can be disposed of safely in an environmentally acceptable manner. The duty imposed on sewerage undertakers by reg 7 is enforceable under the Water Industry Act 1991 s 18 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 163) by the Water Services Regulation Authority: Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 7(7) (amended by SI 2005/2035). 'Industrial waste water' means any waste water which is discharged from premises used for carrying on any trade or industry, other than domestic waste water and run-off rain water: Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 2(1). 'Domestic waste water' means waste water from residential settlements and services which originates predominantly from the human metabolism and from household activities: reg 2(1). 'Collecting system' means a system of conduits which collects and conducts urban waste water: reg 2(1). 'Urban waste water' means domestic waste water or the mixture of domestic waste water with industrial waste water and with run-off rain water or with run-off rain water: reg 2(1). 'Sludge' means residual sludge, whether treated or untreated, from urban waste water treatment plants: reg 2(1). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

Nothing in the Water Industry Act 1991 s 121(1), (2) (see PARA 1049) may be construed as restricting the power of a sewerage undertaker to impose in any consent under Pt IV Ch III such conditions as are necessary to comply with the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 7(1): reg 7(2). Nothing in any agreement entered into between a sewerage undertaker or its predecessor and the owner or occupier of premises used for carrying on any trade or industry may be treated as a consent or authorisation for the purposes of the Water Industry Act 1991 Pt IV Ch III unless the terms of that agreement are such as will secure that the requirements of the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, Sch 4 are met in respect of any discharge to which the agreement relates: reg 7(3). Sewerage undertakers must review, and if necessary modify, the consents or authorisations granted or deemed to be granted under the Water Industry Act 1991 Pt IV Ch III at regular intervals: Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 7(4).

For the purposes of complying with reg 7(1), a sewerage undertaker may vary any agreement under the Water Industry Act 1991 s 129 (see PARA 1053) which provides for the discharge of industrial waste water to an urban waste water treatment plant without first entering a public sewer; and any such agreement is not enforceable if and to the extent that it permits any discharge of industrial waste water in respect of which the requirements of the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, Sch 4 are not met: reg 7(5). Nothing in the Water Industry Act 1991 Pt IV Ch III may restrict the power of a sewerage undertaker or the Secretary of State to vary a consent or authorisation in pursuance of the duty imposed by the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 7, or render a sewerage undertaker or the Secretary of State liable to pay compensation as a consequence of any such variation made in pursuance of that duty: reg 7(6).

As to the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, see further PARA 30.

5 As to the meaning of 'notice' see PARA 1037 note 2.

6 As to the meaning of 'owner' see PARA 1004 note 9.

7 Water Industry Act 1991 s 119(1). Every application or consent made or given under Pt IV Ch III must be made or given in writing: s 141(3).

8 Water Industry Act 1991 s 119(2). As from a day to be appointed, s 119(2) is amended so as to also require the application to state what steps are proposed to be taken for minimising the polluting effects of the discharge on any controlled waters and the impact of the discharge on sewerage services: see s 119(2) (prospectively amended by the Water Act 2003 s 89(1)(a)). For these purposes, 'controlled waters' has the meaning given by the Water Resources Act 1991 s 104 (see PARA 289): see the Water Industry Act 1991 s 119(3) (prospectively added by the Water Act 2003 s 89(1)(b)). At the date at which this volume states the law no such day had been appointed.

9 It is necessary for the purposes of the Water Industry Act 1991 Pt IV Ch III.

10 Water Industry Act 1991 s 118(5). This applies to a discharge indirectly into the public sewers; it is therefore an offence to discharge trade effluents by way of other trade premises without serving a trade effluent notice, although a similar discharge from the latter premises would be lawful: *Yorkshire Dyeing and Proofing Co Ltd v Middleton Borough Council* [1953] 1 All ER 540, [1953] 1 WLR 393, DC. See also *United Utilities Water plc v Moss Rose Piggeries Ltd* [2006] EWHC 2169 (Admin), [2006] All ER (D) 338 (Jun).

The penalty on summary conviction is a fine not exceeding the statutory maximum, and on conviction on indictment is a fine: see the Water Industry Act 1991 s 118(5). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

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1048. Appeals.

Any person aggrieved by¹: (1) the refusal of a sewerage undertaker² to give a consent for which application has been duly made to the undertaker³; (2) the failure of a sewerage undertaker to give such a consent within the period of two months beginning with the day after service of the notice containing the application⁴; or (3) any condition attached by a sewerage undertaker to such a consent, may appeal to the Water Services Regulation Authority⁵.

On such an appeal in respect of a refusal or failure to give a consent, the Authority may give the necessary consent, either unconditionally or subject to such conditions as it thinks fit to impose for determining any of the matters as respects which the undertaker has power to impose conditions⁶. On an appeal in respect of a condition attached to a consent, the Authority may take into review all the conditions attached to the consent, whether appealed against or not, and may substitute for them any other set of conditions, whether more or less favourable to the appellant, or annul any of the conditions⁷. On any appeal⁸, the Authority may give a direction that the trade effluent⁹ in question must not be discharged until a specified date¹⁰.

1 Water Industry Act 1991 s 122(1). As to the person aggrieved see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 66.

2 As to sewerage undertakers see PARA 999.

3 Water Industry Act 1991 s 122(1)(a). The application referred to in the text is an application under s 119 (see PARA 1047): see s 122(1)(a).

4 Water Industry Act 1991 s 122(1)(b).

5 Water Industry Act 1991 s 122(1) (amended by the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

At any stage of the proceedings on an appeal under the Water Industry Act 1991 s 122, the Authority may, and if so directed by the High Court must, state in the form of a special case for the decision of the High Court any question of law arising in those proceedings: s 137(1) (amended by the Water Act 2003 s 36(2)). The decision of the High Court on a special case under the Water Industry Act 1991 s 122 is deemed to be a judgment of the court within the meaning of the Senior Courts Act 1981 s 16 (see **COURTS** vol 10 (Reissue) PARA 639); but no appeal to the Court of Appeal may be brought by virtue of the Water Industry Act 1991 s 137(2) except with the leave of the High Court or of the Court of Appeal: s 137(2) (amended by the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1(2)).

6 Water Industry Act 1991 s 122(2). The undertaker has power to impose conditions under s 121 (see PARA 1049): s 122(2). Any consent given or conditions imposed by the Authority under s 122 in respect of discharges of trade effluent have effect for the purposes of Pt IV Ch III (ss 118-141) as if given or imposed by the sewerage undertaker in question: s 122(6) (amended by the Water Act 2003 s 36(2)).

The powers of the Authority under the Water Industry Act 1991 s 122 are subject to the provisions of s 123 (see PARA 1060), s 128 (see PARA 1052), s 133 (see PARA 1065), s 135 (see PARA 1056) and s 137 (see note 5): see s 122(7) (amended by the Water Act 2003 s 36(2)).

7 Water Industry Act 1991 s 122(3) (amended by the Water Act 2003 s 36(2)). The Authority may, under the Water Industry Act 1991 s 122(3), include provision as to the charges to be made in pursuance of any condition attached to a consent for any period before the determination of the appeal: s 122(4) (amended by the Water Act 2003 s 36(2)).

8 I.e. under the Water Industry Act 1991 s 122.

9 As to the meaning of 'trade effluent' see PARA 1047 note 3.

10 Water Industry Act 1991 s 122(5) (amended by the Water Act 2003 s 36(2)).

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1049. Conditions imposed by sewerage undertakers.

The power of a sewerage undertaker¹ to give a consent with respect to the discharge of any trade effluent² is a power to give a consent either unconditionally or subject to such conditions as the sewerage undertaker thinks fit to impose³ with respect to: (1) the sewer or sewers⁴ into which the trade effluent may be discharged⁵; (2) the nature or composition of the trade effluent which may be discharged⁶; (3) the maximum quantity of trade effluent which may be discharged on any one day, either generally or into a particular sewer⁷; and (4) the highest rate at which trade effluent may be discharged, either generally or into a particular sewer⁸.

Conditions with respect to all or any of the following matters may also be attached to a consent to the discharge of trade effluent from any trade premises⁹:

- 2254 (a) the period or periods of the day during which the trade effluent may be discharged from the trade premises into the sewer¹⁰;
- 2255 (b) the exclusion from the trade effluent of all condensing water¹¹;
- 2256 (c) the elimination or diminution, in certain cases¹², of any specified constituent of the trade effluent, before it enters the sewer¹³;
- 2257 (d) the temperature of the trade effluent at the time when it is discharged into the sewer, and its acidity or alkalinity at that time¹⁴;
- 2258 (e) the payment by the occupier of the trade premises to the undertaker of charges for the reception of the trade effluent into the sewer and for the disposal of the effluent¹⁵;
- 2259 (f) the provision and maintenance of such an inspection chamber or manhole as will enable a person readily to take samples, at any time, of what is passing into the sewer from the trade premises¹⁶;
- 2260 (g) the provision, testing and maintenance of such meters¹⁷ as may be required to measure the volume and rate of discharge of any trade effluent being discharged from the trade premises into the sewer¹⁸;
- 2261 (h) the provision, testing and maintenance of apparatus for determining the nature and composition of any trade effluent being discharged from the premises into the sewer¹⁹;
- 2262 (i) the keeping of records of the volume, rate of discharge, nature and composition of any trade effluent being discharged and, in particular, the keeping of records of readings of meters and other recording apparatus provided in compliance with any other condition attached to the consent²⁰; and
- 2263 (j) the making of returns and giving of other information to the sewerage undertaker concerning the volume, rate of discharge, nature and composition of any trade effluent discharged from the trade premises into the sewer²¹.

If, in the case of any trade premises, a condition so imposed is contravened, the occupier of the premises is guilty of an offence and liable to a penalty²².

1 As to sewerage undertakers see PARA 999.

2 le on an application under the Water Industry Act 1991 s 119: see PARA 1047. As to the meaning of 'trade effluent' see PARA 1047 note 3.

3 Water Industry Act 1991 s 121(1). Section 121 has effect subject to the provisions of s 133 (see PARA 1065) and s 135(3) (see PARA 1056): s 121(7). See also note 6; and PARA 1047 note 4.

4 As to the meaning of 'sewer' see PARA 998.

5 Water Industry Act 1991 s 121(1)(a).

6 Water Industry Act 1991 s 121(1)(b).

7 Water Industry Act 1991 s 121(1)(c).

8 Water Industry Act 1991 s 121(1)(d). As from a day to be appointed, s 121(1) is amended so as to also refer to conditions with respect to the steps to be taken for minimising the polluting effects of the discharge on any controlled waters and the impact of the discharge on sewerage services: see s 121(1)(ba) (prospectively amended by the Water Act 2003 s 89(2)(a)). For these purposes, 'controlled waters' has the meaning given by the Water Resources Act 1991 s 104 (see PARA 289): see the Water Industry Act 1991 s 121(6) (prospectively amended by the Water Act 2003 s 89(2)(b)). At the date at which this volume states the law no such day had been appointed.

9 Water Industry Act 1991 s 121(2). See also PARA 1047 note 4. As to the meaning of 'trade premises' see PARA 1047 note 1.

10 Water Industry Act 1991 s 121(2)(a).

11 Water Industry Act 1991 s 121(2)(b).

12 le those cases falling within the Water Industry Act 1991 s 121(3). A case falls within s 121(3) where the sewerage undertaker is satisfied that the constituent in question, either alone or in combination with any matter with which it is likely to come into contact while passing through any sewers: (1) would injure or obstruct those sewers, or make the treatment or disposal of the sewage from those sewers specially difficult or expensive; or (2) in the case of trade effluent which is to be or is discharged into a sewer having an outfall in any harbour or tidal water, or into a sewer which connects directly or indirectly with a sewer or sewage disposal works having such an outfall, would cause or tend to cause injury or obstruction to the navigation on, or the use of, the harbour or tidal water: s 121(3). As to the meaning of 'sewage disposal works' see PARA 998. 'Harbour' has the same meaning as in the Merchant Shipping Act 1995 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 611): Water Industry Act 1991 s 121(6) (amended by the Merchant Shipping Act 1995 Sch 13 para 89(a)). 'Tidal water' has the same meaning as in the Merchant Shipping Act 1995 (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 987): Water Industry Act 1991 s 121(6) (as so amended). See also note 6.

13 Water Industry Act 1991 s 121(2)(c).

14 Water Industry Act 1991 s 121(2)(d).

15 Water Industry Act 1991 s 121(2)(e). In the exercise of this power regard must be had: (1) to the nature and composition and to the volume and rate of discharge of the trade effluent discharged; (2) to any additional expense incurred or likely to be incurred by a sewerage undertaker in connection with the reception or disposal of the trade effluent; and (3) to any revenue likely to be derived by the undertaker from the trade effluent: s 121(4).

16 Water Industry Act 1991 s 121(2)(f).

17 As to the meaning of 'meter' see PARA 1040 note 3.

18 Water Industry Act 1991 s 121(2)(g).

19 Water Industry Act 1991 s 121(2)(h).

20 Water Industry Act 1991 s 121(2)(i).

21 Water Industry Act 1991 s 121(2)(j).

22 Water Industry Act 1991 s 121(5). The penalty on summary conviction is a fine not exceeding the statutory maximum, and on conviction on indictment is a fine: see s 121(5). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

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1050. Variation of conditions and appeals with respect to variations of consent.

A sewerage undertaker¹ may from time to time give a direction varying the conditions² which have been attached to any of its consents³ to the discharge of trade effluent into a public sewer⁴. No such direction may be given within two years from the date of the consent, or, where a previous direction has been given⁵ with respect to that consent, within two years from the date on which notice was given of that direction⁶, but this does not prevent a direction being given before the time so specified if it is given with the consent of the owner⁷ and occupier of the trade premises in question⁸. The sewerage undertaker must give to the owner and occupier of the trade premises to which a consent⁹ relates notice of any direction with respect to that consent¹⁰.

A sewerage undertaker may give a direction varying the conditions¹¹ before the specified time¹² and without the required consent¹³ if it considers it necessary to do so in order to provide proper protection for persons likely to be affected by the discharges which could lawfully be made apart from the direction¹⁴. Where a sewerage undertaker gives such a direction, the undertaker is liable to pay compensation to the owner and occupier of the trade premises to which the direction relates, unless the undertaker is of the opinion that the direction is required¹⁵: (1) in consequence of a change of circumstances which has occurred since the beginning of the period of two years in question, and could not reasonably have been foreseen at the beginning of that period¹⁶; and (2) otherwise than in consequence of consents for discharges given after the beginning of that period¹⁷. Where an undertaker gives such a direction and is of such an opinion, it is the duty of the undertaker to give notice of the reasons for its opinion to the owner and occupier of the premises in question¹⁸.

The owner or occupier of any trade premises may within two months of the giving to him of a notice of a direction varying conditions attached to consents¹⁹, or with the written permission of the Water Services Regulation Authority at any later time, appeal to the Authority against the direction²⁰. On such an appeal, the Authority has the power to annul the direction given by the sewerage undertaker, and to substitute for it any other direction, whether more or less favourable to the appellant²¹. Any direction given by the Authority may include provision as to the charges to be made for any period between the giving of the notice by the sewerage undertaker and the determination of the appeal²². Any consent given or conditions imposed by the Authority in respect of discharges of trade effluent have effect²³ as if given or imposed by the sewerage undertaker in question²⁴.

1 As to sewerage undertakers see PARA 999.

2 References to the variation of conditions include references to the addition or annulment of a condition and to the attachment of a condition to a consent to which no condition was previously attached: Water Industry Act 1991 s 124(7).

3 I.e. any of its consents under the Water Industry Act 1991 Pt IV Ch III (ss 118-141).

4 Water Industry Act s 124(1). This provision is expressed to be subject to s 128 (see PARA 1052), s 133 (see PARA 1065) and s 135(3) (see PARA 1056): see s 124(1). As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7. As to the meaning of 'trade effluent' see PARA 1047 note 3.

5 I.e. given under the Water Industry Act s 124.

6 Water Industry Act 1991 s 124(2). This provision is expressed to be subject to s 124(3), (4) (see the text and note 8) and s 125 (see the text and notes 11-18): see s 124(2). As to the meaning of 'notice' see PARA 1037 note 2.

7 As to the meaning of 'owner' see PARA 1004 note 9.

8 Water Industry Act 1991 s 124(3). As to the meaning of 'trade premises' see PARA 1047 note 1. A direction given with the consent mentioned in s 124(3) does not affect the time at which any subsequent direction may be given: s 124(4).

9 Ie a consent under the Water Industry Act 1991 Pt IV Ch III.

10 Water Industry Act 1991 s 124(5). Such a notice must: (1) include information as to the right of appeal conferred by s 126(1) (see the text and note 20) (s 124(6)(a)); and (2) state the date, being a date not less than two months after the giving of the notice, on which, subject to s 126(2) (see note 20), the direction is to take effect (s 124(6)(b)). As to the meaning of 'information' see PARA 1006 note 13.

11 Ie a direction under the Water Industry Act 1991 s 124: see the text and notes 1-10.

12 Ie the time specified in the Water Industry Act 1991 s 124(2): see the text and note 6.

13 Ie the consent required by the Water Industry Act 1991 s 124(3): see the text and note 8.

14 Water Industry Act 1991 s 125(1).

15 Water Industry Act 1991 s 125(2). This provision is expressed to be subject to s 134(3) (see PARA 1065): see s 125(2). The Secretary of State may by regulations make provision as to the manner of determining the amount of any compensation so payable, including the factors to be taken into account in determining that amount: s 125(5). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

16 Water Industry Act 1991 s 125(2)(a). The circumstances referred to in the text may include the information available as to the discharges to which the consent in question relates or as to the interaction of those discharges with other discharges or matter: s 125(4).

17 Water Industry Act 1991 s 125(2)(b).

18 Water Industry Act 1991 s 125(3). A person to whom notice is given in pursuance of s 125(3) may, in accordance with regulations, appeal to the Water Services Regulation Authority against the notice on the ground that compensation ought to be paid in consequence of the direction to which the notice relates: s 126(5) (amended by the Water Act 2003 s 36(2)). On such an appeal, the Authority may direct that the Water Industry Act 1991 s 125 has effect as if the sewerage undertaker in question were not of the opinion to which the notice relates: s 126(6) (amended by the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

19 Ie under the Water Industry Act 1991 s 124(5): see the text and note 10.

20 Water Industry Act 1991 s 126(1) (amended by the Water Act 2003 s 36(2)). Subject to the Water Industry Act 1991 s 126(3), if an appeal against a direction is brought under s 126(1) before the date specified under s 124(6)(b) (see note 10) in the notice of the direction, the direction does not take effect until the appeal is withdrawn or finally disposed of: s 126(2). In so far as the direction which is the subject of an appeal relates to the making of charges payable by the occupier of any trade premises, it may take effect on any date after the giving of the notice: s 126(3).

The powers of the Authority under s 126 are subject to the provisions of s 133 (see PARA 1065), s 135 (see PARA 1056) and s 137: s 126(8) (amended by the Water Act 2003 s 36(2)).

At any stage of the proceedings on an appeal under the Water Industry Act 1991 s 126(1), the Authority may, and if so directed by the High Court must, state in the form of a special case for the decision of the High Court any question of law arising in those proceedings: s 137(1) (amended by the Water Act 2003 s 36(2)). The decision of the High Court on such a special case is deemed to be a judgment of the court within the meaning of the Senior Courts Act 1981 s 16 (see **COURTS** vol 10 (Reissue) PARA 639); but no appeal to the Court of Appeal may be brought by virtue of the Water Industry Act 1991 s 137(2) except with the leave of the High Court or of the Court of Appeal: s 137(2) (amended by the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1(2)).

21 Water Industry Act 1991 s 126(4) (amended by the Water Act 2003 s 36(2)).

- 22 Water Industry Act 1991 s 126(4) (as amended: see note 21).
- 23 le for the purposes of the Water Industry Act 1991 Pt IV Ch III.
- 24 Water Industry Act 1991 s 126(7) (amended by the Water Act 2003 s 36(2)).

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1051. When consent is unnecessary.

Where there was, immediately before 1 December 1991¹, a deemed consent for discharge of trade effluent², it has effect as a deemed consent for the purposes of the provisions of the Water Industry Act 1991 relating to trade effluent³. However, the sewerage undertaker may at any time, and must if requested to do so by any person entitled to make a discharge in pursuance of the deemed consent, by notice⁴ served on the owner⁵ and any occupier of the premises in question cancel the deemed consent and give its actual consent for such discharges as were authorised by the deemed consent⁶.

A person on whom such a notice is served may, in accordance with regulations⁷, appeal to the Water Services Regulation Authority⁸. On such an appeal, the Authority may give the sewerage undertaker in question any such direction as it thinks fit with respect to the notice; and it is the duty of the undertaker to comply with the direction⁹.

Any dispute in so far as it¹⁰: (1) arises after 1 December 1991 and relates to a deemed consent in respect of discharges previously authorised¹¹; and (2) is a dispute: (a) as to the nature or composition of any trade effluent discharged from any trade premises¹² into a sewer¹³ during any period; (b) as to the quantity of trade effluent so discharged on any one day during any period; or (c) as to the rate of trade effluent so discharged during any period¹⁴, must, unless the parties otherwise agree, be referred to the Authority for determination¹⁵. On such a reference, the Authority may make such order in the matter as it thinks just¹⁶.

Regulations¹⁷ may make provision with respect to consents and the conditions of consents for discharges of trade effluent into the sewer of a sewerage undertaker through a drain¹⁸ or sewer provided in pursuance of the provisions relating to alteration of a drainage system¹⁹.

For certain purposes under the Radioactive Substances Act 1993 no account is taken of radioactivity possessed by any substances, articles or premises²⁰.

1 I.e. the commencement of the Water Industry Act 1991.

2 I.e. a deemed consent by virtue of the Control of Pollution Act 1974 s 43(2) (repealed) for the purposes of the Public Health (Drainage of Trade Premises) Act 1937 (which exempted certain discharges from the necessity for consent) which had effect under the Water Act 1989 in relation to any sewerage undertaker: Water Industry Act 1991 s 140, Sch 8 para 2(1). As to sewerage undertakers see PARA 999. As to the meaning of 'trade effluent' see PARA 1047 note 3.

3 Water Industry Act 1991 Sch 8 para 2(1). The provisions referred to in the text are those of Pt IV Ch III (ss 118-141).

4 As to the meaning of 'notice' see PARA 1037 note 2.

5 As to the meaning of 'owner' see PARA 1004 note 9.

6 Water Industry Act 1991 Sch 8 para 2(2). An actual consent so given is given either conditionally or subject to any conditions which may be attached to consents by virtue of s 121 (see PARA 1049): Sch 8 para 2(3). The provisions of Pt IV Ch III with respect to the variation of conditions of a consent apply in relation to an actual consent under Sch 8 para 2(2) as they apply in relation to any other actual consent under Pt IV Ch III: Sch 8 para 2(4). A notice signifying an actual consent under Sch 8 para 2(2) must indicate that a right of appeal is conferred under Sch 8 para 3 (see the text and notes 8-9) in respect of the notice: Sch 8 para 2(5).

7 At the date at which this volume states the law no such regulations had been made but, by virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 Pt I para 1(1), (2), the Control of Pollution (Discharges into Sewers) Regulations 1976, SI 1976/958 (amended by SI 1997/2971; and modified by the Water Act 1989 s 69, Sch 8 paras 1, 5(1), (2)) have effect as if so made.

8 Water Industry Act 1991 Sch 8 para 3(1) (amended by the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

The Water Industry Act 1991 s 137 applies, with the necessary modifications, in relation to appeals under Sch 8 para 3 as it applies in relation to appeals under s 122 (see PARA 1048): Sch 8 para 3(2).

9 Water Industry Act 1991 Sch 8 para 3(3) (amended by the Water Act 2003 s 36(2)).

10 Water Industry Act 1991 Sch 8 para 4(1).

11 Water Industry Act 1991 Sch 8 para 4(1)(a). ie authorised under the Public Health (Drainage of Trade Premises) Act 1937 s 4 (repealed).

12 As to the meaning of 'trade premises' see PARA 1047 note 1.

13 As to the meaning of 'sewer' see PARA 998.

14 Water Industry Act 1991 Sch 8 para 4(1)(b).

15 Water Industry Act 1991 Sch 8 para 4(1) (amended by the Water Act 2003 s 36(2)).

16 Water Industry Act 1991 Sch 8 para 4(2) (amended by the Water Act 2003 s 36(2)). An order on such a reference is final, but the Water Industry Act 1991 s 137 applies, with the necessary modifications, in relation to references under Sch 8 para 4 as it applies in relation to appeals under s 122 (see PARA 1048): Sch 8 para 4(3).

17 At the date at which this volume states the law no such regulations had been made but, by virtue of the Water Consolidation (Consequential Provisions) Act 1991 Sch 2 Pt I para 1(1), (2), the Control of Pollution (Discharges into Sewers) Regulations 1976, SI 1976/958 (as amended and modified: see note 7) have effect as if so made.

18 As to the meaning of 'drain' see PARA 998.

19 Water Industry Act 1991 s 113(6). The provisions referred to in the text are those of s 113 (see PARA 1081): see s 113(6).

20 See the Radioactive Substances Act 1993 s 40, Sch 3 Pt I; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1463.

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1052. Variation of right to discharge in special cases.

If, after a direction has been given¹ requiring that trade effluent² is not to be discharged until a specified date, it appears to the sewerage undertaker³ in question that in consequence of a failure to complete any works required in connection with the reception and disposal of the trade effluent, or of any other exceptional circumstances, a later date ought to be substituted for the date specified in the direction, the undertaker may apply to the Water Services Regulation Authority⁴ for such a substitution⁵. The Authority has power, on such an application, to vary the direction so as to extend the period during which the trade effluent may not be discharged until the date specified in the application or, if it thinks fit, any earlier date⁶.

Not less than one month before making an application, a sewerage undertaker must give notice⁷ of its intention to the owner⁸ and occupier of the trade premises⁹ from which the trade effluent is to be discharged¹⁰.

The Authority, before varying a direction on an application, must take into account any representations made to it by the owner or occupier of the trade premises in question¹¹.

1 le a direction under the Water Industry Act 1991 ss 124-126: see PARA 1050.

2 As to the meaning of 'trade effluent' see PARA 1047 note 3.

3 As to sewerage undertakers see PARA 999.

4 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

5 Water Industry Act 1991 s 128(1) (amended by the Water Act 2003 s 36(2)).

6 Water Industry Act 1991 s 128(2) (amended by the Water Act 2003 s 36(2)).

7 As to the meaning of 'notice' see PARA 1037 note 2.

8 As to the meaning of 'owner' see PARA 1004 note 9.

9 As to the meaning of 'trade premises' see PARA 1047 note 1.

10 Water Industry Act 1991 s 128(3).

11 Water Industry Act 1991 s 128(4) (amended by the Water Act 2003 s 36(2)).

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1053. Agreements with traders or other authorities.

A sewerage undertaker¹ may enter into and carry into effect: (1) an agreement with the owner² or occupier of any trade premises³ within its area for the reception and disposal by the undertaker of any trade effluent⁴ produced on those premises⁵; (2) an agreement with the owner or occupier of any such premises under which it undertakes, on such terms as may be specified in the agreement, to remove and dispose of substances produced in the course of treating any trade effluent on or in connection with those premises⁶. The power of a sewerage undertaker to enter into such an agreement includes a power, by that agreement, to authorise such a discharge as apart from the agreement would require a consent⁷.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'owner' see PARA 1004 note 9.

3 As to the meaning of 'trade premises' see PARA 1047 note 1.

4 As to the meaning of 'trade effluent' see PARA 1047 note 3.

5 Water Industry Act 1991 s 129(1)(a). Section 129 is subject to s 130 (see PARA 1062) and s 133 (see PARA 1065): see s 129(1). Without prejudice to the generality of s 129(1), an agreement under s 129(1)(a) may, in particular, provide: (1) for the construction or extension by the sewerage undertaker of such works as may be required for the reception or disposal of the trade effluent; and (2) for the repayment by the owner or occupier, as the case may be, of the whole or part of the expenses incurred by the undertaker in carrying out its obligations under the agreement: s 129(2).

6 Water Industry Act 1991 s 129(1)(b). As to inspection of agreements under s 129 see PARA 1055.

7 Water Industry Act 1991 s 129(3). The requirement for a consent is a requirement under Pt IV Ch III (ss 118-141): see s 129(3). An agreement authorising the discharge of trade effluent into a public sewer provides a defence to the offence under s 118(5) (see PARA 1047) but, in doing so, does not constitute a consent: see s 129(3).

For the purposes of complying with the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 7(1) (see PARA 1047 note 4), a sewerage undertaker may vary any agreement under the Water Industry Act 1991 s 129 which provides for the discharge of industrial waste water to an urban waste water treatment plant without first entering a public sewer; and any such agreement is not enforceable if and to the extent that it permits any discharge of industrial waste water in respect of which the requirements of the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, Sch 4 (see PARA 1047 note 4) are not met: reg 7(5). As to the meanings of 'industrial waste water' and 'urban waste water' see PARA 1047 note 4.

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1054. Evidence from meters.

Any meter¹ or apparatus provided² in any trade premises³ for the purpose of measuring, recording or determining the volume, rate of discharge, nature or composition of any trade effluent⁴ discharged from those premises may be presumed in any proceedings to register accurately, unless the contrary is shown⁵.

1 As to the meaning of 'meter' see PARA 1040 note 3.

2 Ie in pursuance of the Water Industry Act 1991 Pt IV Ch III (ss 118-141).

3 As to the meaning of 'trade premises' see PARA 1047 note 1.

4 As to the meaning of 'trade effluent' see PARA 1047 note 3.

5 Water Industry Act 1991 s 136.

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1055. Trade effluent registers.

It is the duty of every sewerage undertaker¹ to secure that copies of: (1) every consent given or having effect as if given by the undertaker with respect to trade effluent²; (2) every direction given or having effect as if given by the undertaker with respect to trade effluent³; (3) every agreement entered into or having effect as if entered into by the undertaker with respect to the disposal of trade effluent⁴; and (4) every notice served on the undertaker with respect to the determination by the Environment Agency⁵ of any question on a reference or review⁶, are kept available, at all reasonable times, for inspection by the public free of charge at the offices of the undertaker⁷. It is the duty of every sewerage undertaker, on the payment of such sum as may be reasonable, to furnish a person who requests it with a copy of, or of an extract from, anything kept available for inspection⁸.

1 As to sewerage undertakers see PARA 999.

2 Water Industry Act 1991 s 196(1)(a). The consent referred to in the text is a consent under Pt IV Ch III (ss 118-141): see s 196(1)(a). As to the meaning of 'trade effluent' see PARA 1047 note 3.

3 Water Industry Act 1991 s 196(1)(b). The direction referred to in the text is a direction under Pt IV Ch III: see s 196(1)(b).

4 Water Industry Act 1991 s 196(1)(c). The agreement referred to in the text is an agreement under s 129 (see PARA 1053): see s 196(1)(c).

5 As to the Environment Agency see PARA 68 et seq.

6 Water Industry Act 1991 s 196(1)(e). The notice referred to in the text is a notice under s 132 (see PARA 1064): see s 196(1)(e).

7 Water Industry Act 1991 s 196(1). The duties of a sewerage undertaker under s 132 are enforceable under s 18 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 163) by the Water Services Regulation Authority: s 196(3) (amended by the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

8 Water Industry Act 1991 s 196(2).

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1056. Restrictions on power to fix charges.

On any appeal to the Water Services Regulation Authority¹ with respect to decisions on applications² or any appeal with respect to variations of consent³, conditions providing for the payment of charges to the sewerage undertaker⁴ in question may not be determined by the Authority except in so far as no provision is in force by virtue of a charges scheme⁵ in respect of any such receptions, discharges, removals or disposals of effluent or substances⁶ as are of the same description as the reception, discharge, removal or disposal which is the subject-matter of the appeal⁷. In so far as any such conditions⁸ do fall to be determined by the Authority, they must be determined having regard to the desirability of that undertaker's recovering the expenses of complying with its obligations in consequence of the consent or agreement to which the conditions relate, and securing a reasonable return on its capital⁹. To the extent that the restrictions on the power to fix charges¹⁰ exclude any charges from a determination on an appeal those charges may be fixed from time to time by a charges scheme¹¹ but not otherwise¹².

1 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

2 I.e applications under the Water Industry Act 1991 s 122: see PARA 1048.

3 I.e appeals under the Water Industry Act 1991 s 126(1): see PARA 1050.

4 As to sewerage undertakers see PARA 999.

5 I.e a charges scheme under the Water Industry Act 1991 s 143: see **WATER AND WATERWAYS** vol 100 (2009) PARA 421.

6 As to the meaning of 'effluent' see PARA 1003 note 2. See also PARA 1047 note 3. 'Substance' includes micro-organisms and any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour: Water Industry Act 1991 s 219(1).

7 Water Industry Act 1991 s 135(1) (amended by the Water Act 2003 s 36(2)).

8 I.e any such conditions as are mentioned in the Water Industry Act 1991 s 135(1): see the text and note 7.

9 Water Industry Act 1991 s 135(2) (amended by the Water Act 2003 s 36(2)).

10 I.e the restrictions under the Water Industry Act 1991 s 135(1): see the text and note 7.

11 See note 5.

12 Water Industry Act 1991 s 135(3).

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1057. Information to be given to a sewerage undertaker.

The owner¹ or occupier of any land on or under which is situated any sewer, drain, pipe², channel or outlet used or intended to be used for discharging any trade effluent³ into a sewer of a sewerage undertaker⁴ must, when requested to do so by the undertaker⁵:

- 2264 (1) produce to the undertaker all such plans of the sewer, drain, pipe, channel or outlet as the owner or, as the case may be, occupier possesses or is able without expense to obtain⁶;
- 2265 (2) allow copies of the plans so produced by him to be made by, or under the directions of, the undertaker⁷; and
- 2266 (3) furnish to the undertaker all such information⁸ as the owner or, as the case may be, occupier can reasonably be expected to supply with respect to the sewer, drain, pipe, channel or outlet⁹.

Every person who fails to comply with these provisions is guilty of an offence¹⁰.

No person may disclose any information furnished to him¹¹ except¹²: (a) with the consent of the person by whom the information was furnished¹³; (b) in connection with the execution of the provisions relating to trade effluent¹⁴; (c) for the purposes of any proceedings arising under those provisions (including any appeal or application to the Secretary of State¹⁵ or the Water Services Regulation Authority¹⁶ or an arbitration)¹⁷; (d) for the purposes of any criminal proceedings (whether or not so arising)¹⁸; or (e) for the purposes of any report of any proceedings falling within head (c) or head (d) above¹⁹.

1 As to the meaning of 'owner' see PARA 1004 note 9.

2 As to the meanings of 'sewer' and 'drain' see PARA 998. As to the meaning of 'pipe' see PARA 998.

3 As to the meaning of 'trade effluent' see PARA 1047 note 3; definition applied by the Water Industry Act 1991 s 204(4). Section 139 (see PARA 1047) has effect for the purposes of s 204 as it has effect for the purposes of Pt IV Ch III (ss 118-141): s 204(4).

4 As to sewerage undertakers see PARA 999.

5 Water Industry Act 1991 s 204(1). A request by a sewerage undertaker for the purposes of s 204 must be made in writing: s 204(2).

6 Water Industry Act 1991 s 204(1)(a).

7 Water Industry Act 1991 s 204(1)(b).

8 As to the meaning of 'information' see PARA 1006 note 13.

9 Water Industry Act 1991 s 204(1)(c).

10 Water Industry Act 1991 s 204(3). A person who is guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 204(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

- 11 le under the Water Industry Act 1991 s 204 or Pt IV Ch III.
- 12 Water Industry Act 1991 s 206(2) (amended by the Environment Act 1995 Sch 22 para 121(1), Sch 24).
- 13 Water Industry Act 1991 s 206(2)(a).
- 14 Water Industry Act 1991 s 206(2)(b). The provisions referred to in the text are those of Pt IV Ch III.
- 15 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.
- 16 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.
- 17 Water Industry Act 1991 s 206(2)(c) (amended by the Water Act 2003 s 36(2)).
- 18 Water Industry Act 1991 s 206(2)(d).
- 19 Water Industry Act 1991 s 206(2)(e). A person who is guilty of an offence under s 206 by virtue of s 206(2) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both: s 206(9). As from a day to be appointed, this provision is amended so as to remove the reference to imprisonment: see s 206(9) (prospectively amended by the Criminal Justice Act 2003 Sch 37 Pt 9). At the date at which this volume states the law no such day had been appointed.

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1058. Effect of local Acts.

Subject to any provision to the contrary¹, nothing in any local statutory provision² passed or made before 1 September 1989³ may be construed as relieving any sewerage undertaker⁴ from any liability arising by virtue of the Water Industry Act 1991 in respect of any act or omission occurring on or after that date⁵.

1 le contained in the Water Act 1989 s 190, Sch 26 or in the Water Consolidation (Consequential Provisions) Act 1991.

2 As to the meaning of 'local statutory provision' see PARA 1020 note 5.

3 le the transfer date for the purposes of the Water Act 1989 s 4(1): see the Water Authorities (Transfer of Functions) (Appointed Day) Order 1989, SI 1989/1530, arts 1, 2.

4 As to sewerage undertakers see PARA 999.

5 Water Industry Act 1991 s 220. There is a power to amend or adapt local acts: see the Public Health (Drainage of Trade Premises) Act 1937 s 12; and the Public Health Act 1961 s 69(2). See also PARA 1 note 39.

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B. SPECIAL CATEGORY EFFLUENT

1059. Applications for the discharge of special category effluent.

Where a notice¹ containing an application for consent to discharge trade effluent² is served on a sewerage undertaker³ with respect to discharges of any special category effluent⁴, it is the duty of the undertaker to refer to the Environment Agency⁵ the questions whether the discharges to which the notice relates ought to be prohibited and whether, if they are not prohibited, any requirements ought to be imposed as to the conditions on which they are made⁶. Such a reference which is required to be made by a sewerage undertaker must be made before the end of the period of two months beginning with the day after the notice containing the application is served on the undertaker⁷. If a sewerage undertaker fails, within such a period, to refer to the Agency any question which it is required⁸ to refer to the Agency, the undertaker is guilty of an offence⁹.

It is the duty of a sewerage undertaker where it has made a reference not to give any consent, or enter into any agreement, with respect to the discharges to which the reference relates at any time before the Agency serves notice on the undertaker of the determination on the reference¹⁰. Every reference must be made in writing and must be accompanied by a copy of the notice containing the application in respect of which it is made¹¹. It is the duty of a sewerage undertaker, on making a reference, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether the discharges to which the reference relates are to be by the owner or by the occupier¹².

1 As to the meaning of 'notice' see PARA 1037 note 2.

2 I.e. under the Water Industry Act 1991 s 119: see PARA 1047.

3 As to sewerage undertakers see PARA 999.

4 Subject to the Water Industry Act 1991 s 138(1A) and s 138(2), trade effluent is special category effluent for the purposes of Pt IV Ch III (ss 118-141) if: (1) such substances as may be prescribed under the Water Industry Act 1991 are present in the effluent or are present in the effluent in prescribed concentrations; or (2) the effluent derives from any such process as may be so prescribed or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts: s 138(1) (amended by SI 2000/1973). 'Prescribed' means prescribed by regulations: Water Industry Act 1991 s 219(1). As to prescribed processes and substances see the Trade Effluents (Prescribed Processes and Substances) Regulations 1992, SI 1992/339. By virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 Pt I para 1(1), (2), the Trade Effluents (Prescribed Processes and Substances) Regulations 1989, SI 1989/1156 (amended by SI 1990/1629) have effect as if made under the Water Industry Act 1991 s 138. As to the meaning of 'trade effluent' see PARA 1047 note 3.

If trade effluent is produced, or to be produced, by operating any Part A installation or Part A mobile plant or otherwise carrying on any Part A activity, the operation or carrying on of which requires a permit, that effluent is not special category effluent for the purposes of the Water Industry Act 1991 Pt IV Ch III as from the determination date relating to the installation, plant or activity in question: s 138(1A) (s 138(1A), (1B) added by SI 2000/1973; and the Water Industry Act 1991 s 138(1A) amended by SI 2007/3538). 'Determination date', in relation to an installation, plant or activity, means: (a) in the case of an installation, plant or activity in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it; (b) in the case of an installation, plant or activity in relation to which the grant of a permit is refused, the date of refusal or, on appeal, of the affirmation of the refusal, and in heads (a) and

(b) above the references to an appeal are references to an appeal under regulations under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 (see PARA 662 et seq, in particular PARA 667); and 'permit' means a permit granted under the 2007 Regulations: Water Industry Act 1991 s 138(1B)(a), (b) (as so added; and amended by SI 2007/3538). As to the meanings of the expressions 'Part A activity', 'Part A installation' and 'Part A mobile plant' see PARA 663 note 1; definitions applied by the Water Industry Act 1991 s 138(1B)(aa) (s 138(1B) as so added; and s 138(1B)(aa) added by SI 2007/3538).

Trade effluent is not special category effluent for the purposes of the Water Industry Act 1991 Pt IV Ch III if it is produced, or to be produced, in any process which is a prescribed process designated for central control as from the date which is the determination date for that process: s 138(2). 'Determination date', in relation to a prescribed process, means: (i) in the case of a process for which authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it; (ii) in the case of a process for which authorisation is refused, the date of refusal or, on appeal, of the affirmation of the refusal: s 138(3). In s 138(2), (3), 'authorisation', 'enforcing authority' and 'prescribed process' have the meanings given by Environmental Protection Act 1990 s 1 (see PARAS 159, 161); and the references to designation for central control and to an appeal are references, respectively, to designation under s 4 (see PARA 161) and to an appeal under s 15 (see PARA 176): Water Industry Act 1991 s 138(4) (amended by SI 2000/1973). As from a day to be appointed, the provisions of the Water Industry Act 1991 s 138(2)-(4) are repealed by the Pollution Prevention and Control Act 1999 Sch 3. At the date at which this volume states the law no such day had been appointed. As to the prospective repeal of the Environmental Protection Act 1990 Pt I (ss 1-28) see PARA 159 note 2.

Without prejudice to the power in the Water Industry Act 1991 s 139(3) (see PARA 1047), nothing in Pt IV Ch III enables regulations under s 138 to prescribe as special category effluent any liquid or matter which is not trade effluent but falls to be treated as such for the purposes of Pt IV Ch III by virtue of an order under s 139: s 138(5). This provision is repealed by the Water Act 2003 s 88(3), Sch 9 Pt 3 as from a day to be appointed under s 105. At the date at which this volume states the law no such day had been appointed.

5 As to the Environment Agency see PARA 68 et seq. As to powers and procedure on references to the Environment Agency, and the effect of determinations, see PARA 1064 et seq.

6 Water Industry Act 1991 s 120(1) (amended by the Environment Act 1995 Sch 22 para 105). This provision is subject to the Water Industry Act 1991 s 120(3) (see note 7): see s 120(1) (as so amended).

7 Water Industry Act 1991 s 120(2). There is no obligation on a sewerage undertaker to make a reference under s 120 in respect of any application if, before the end of the period mentioned in s 120(2), there is a refusal by the undertaker to give any consent on the application: s 120(3).

8 le required by the Water Industry Act 1991 s 120(1).

9 Water Industry Act 1991 s 120(9) (s 120(9), (10) added by the Environment Act 1995 Sch 22 para 105). A sewerage undertaker that is guilty of an offence is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum; (2) on conviction on indictment, to a fine: Water Industry Act 1991 s 120(9) (as so added). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. If the Environment Agency becomes aware of any such failure, it may: (a) if a consent under Pt IV Ch III to make discharges of any special category effluent has been granted on the application in question, exercise its powers of review under s 127 (see PARA 1061) or s 131 (see PARA 1063), notwithstanding anything in s 127(2) or s 131(2); or (b) in any other case, proceed as if the reference required by s 120 had been made: s 120(10) (as so added).

10 Water Industry Act 1991 s 120(4) (amended by the Environment Act 1995 Sch 22 para 105).

11 Water Industry Act 1991 s 120(5).

12 Water Industry Act 1991 s 120(6). As to the meaning of 'owner' see PARA 1004 note 9. As to the meaning of 'trade premises' see PARA 1047 note 1.

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1060. Appeals with respect to the discharge of special category effluent.

Specific provisions apply in relation to appeals concerning special category effluent¹. Where a reference is made to the Environment Agency², the period³ does not begin to run in relation to an appeal against non-determination by the sewerage undertaker⁴ until the beginning of the day after the Agency serves notice⁵ on the sewerage undertaker in question of the determination on the reference⁶. If, on an appeal⁷, it appears to the Water Services Regulation Authority that the case is one in which the sewerage undertaker in question is required to make a reference⁸ before giving a consent and that the undertaker has not made such a reference⁹, the Authority is not entitled to determine the appeal, otherwise than by upholding a refusal, except where certain conditions are satisfied¹⁰. The conditions are satisfied if the Authority has itself referred the questions relating to the discharge of special category effluent¹¹ to the Agency and has been sent a copy of the notice of the Agency's determination on the reference¹².

1 As to special category effluent see PARA 1059 note 4. See also PARA 1047 note 3.

2 Ie under the Water Industry Act 1991 s 120. As to the Environment Agency see PARA 68 et seq.

3 Ie the period mentioned in the Water Industry Act 1991 s 122(1)(b): see PARA 1048.

4 As to sewerage undertakers see PARA 999.

5 As to the meaning of 'notice' see PARA 1037 note 2.

6 Water Industry Act 1991 s 123(1) (amended by the Environment Act 1995 Sch 22 para 106). Every reference under the Water Industry Act 1991 s 123 must be made in writing and be accompanied by a copy of the notice containing the application in respect of which the appeal and reference is made: s 123(4). It is the duty of the Water Services Regulation Authority, on making a reference under s 123, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether the discharges to which the reference relates are to be by the owner or by the occupier, and on the sewerage undertaker in question: s 123(5) (amended by the Water Act 2003 s 36(2)). As to the meaning of 'owner' see PARA 1004 note 9. As to the meaning of 'trade premises' see PARA 1047 note 1. As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

7 Ie under the Water Industry Act 1991 s 122: see PARA 1048.

8 Ie a reference under the Water Industry Act 1991 s 120: see PARA 1059.

9 This provision applies whether the case falls within the Water Industry Act 1991 s 120(3) (see PARA 1059) or otherwise: see s 123(2)(b).

10 Water Industry Act 1991 s 123(2) (amended by the Water Act 2003 s 36(2)).

11 Ie the questions under the Water Industry Act 1991 s 120(1): see PARA 1059.

12 Water Industry Act 1991 s 123(3) (amended by the Environment Act 1995 Sch 22 para 106; and the Water Act 2003 s 36(2)).

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1061. Review by the Environment Agency of consents relating to special category effluent.

Where any person, as the owner¹ or occupier of any trade premises², is for the time being authorised³ by virtue of a consent⁴ to make discharges of any special category effluent⁵ from those premises into a sewerage undertaker's public sewer⁶, the Environment Agency⁷ may review the questions whether the discharges authorised by the consent ought to be prohibited and whether, if they are not prohibited, any requirements ought to be imposed as to the conditions on which they are made⁸.

The Agency may not review any such question unless⁹:

- 2267 (1) the consent or variation by virtue of which the discharges in question are made has not previously been the subject-matter of a review and was given or made before 1 September 1989¹⁰ or in contravention¹¹ of the duty to give effect to a determination by the Agency on a reference or review¹²;
- 2268 (2) a period of more than two years has elapsed since the time, or last time, when notice of the Agency's determination on any reference or review relating to that consent or the consent to which that variation relates was served¹³ on the owner or occupier of the trade premises in question¹⁴; or
- 2269 (3) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice relating to discharge¹⁵ in the consent or variation by virtue of which the discharges in question are made¹⁶.

These provisions¹⁷ do not apply if the review is carried out: (a) for the purpose of enabling Her Majesty's government in the United Kingdom¹⁸ to give effect to any European Union obligation or to any international agreement to which the United Kingdom is for the time being a party¹⁹; or (b) for the protection of public health or of flora and fauna dependent on an aquatic environment²⁰.

1 As to the meaning of 'owner' see PARA 1004 note 9.

2 As to the meaning of 'trade premises' see PARA 1047 note 1.

3 I.e. whether or not in accordance with a notice under the Water Industry Act 1991 s 132: see PARA 1064. As to the meaning of 'notice' see PARA 1037 note 2.

4 I.e. a consent under the Water Industry Act 1991 Pt IV Ch III (ss 118-141).

5 As to special category effluent see PARA 1059 note 4. See also PARA 1047 note 3.

6 As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7. As to sewerage undertakers see PARA 999.

7 As to the Environment Agency see PARA 68 et seq.

8 Water Industry Act 1991 s 127(1) (s 127(1), (2) amended by the Environment Act 1995 Sch 22 para 107).

9 Water Industry Act 1991 s 127(2) (as amended: see note 8). This provision is expressed to be subject to s 127(3) (see the text and notes 19-20): see s 127(2) (as so amended).

10 Ie the transfer date for the purposes of the Water Act 1989 s 4(1) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 108): Water Authorities (Transfer of Functions) (Appointed Day) Order 1989, SI 1989/1530, arts 1, 2.

11 As to the meaning of 'contravention' see PARA 1004 note 4.

12 Water Industry Act 1991 s 127(2)(a). The duty referred to in the text is the duty under s 133 (see PARA 1065): see s 127(2)(a).

13 Ie under the Water Industry Act 1991 s 132: see PARA 1064.

14 Water Industry Act 1991 s 127(2)(b) (amended by the Environment Act 1995 Sch 22 para 107).

15 Ie a notice under the Water Industry Act 1991 s 132: see PARA 1064.

16 Water Industry Act 1991 s 127(2)(c).

17 Ie the Water Industry Act 1991 s 127(2).

18 As to the meaning of 'United Kingdom' see PARA 1 note 2.

19 Water Industry Act 1991 s 127(3)(a).

20 Water Industry Act 1991 s 127(3)(b).

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1062. Reference to the Environment Agency of agreements relating to special category effluent.

Where a sewerage undertaker¹ and the owner² or occupier of any trade premises³ are proposing to enter into an agreement with respect to, or to any matter connected with, the reception or disposal of any special category effluent⁴, it is the duty of the undertaker to refer to the Environment Agency⁵ the questions⁶: (1) whether the operations which would, for the purposes of or in connection with the reception or disposal of that effluent, be carried out in pursuance of the proposed agreement ought to be prohibited⁷; and (2) whether, if they are not prohibited, any requirements ought to be imposed as to the conditions on which they are carried out⁸.

It is the duty of a sewerage undertaker where it has made a reference not to give any consent or enter into any agreement with respect to any such operations as are mentioned in head (1) above at any time before the Agency serves notice⁹ on the undertaker of the determination on the reference¹⁰.

If a sewerage undertaker fails, before giving any consent or entering into any agreement with respect to any such operations as are mentioned in head (1) above, to refer to the Agency any question which it is required to refer to the Agency¹¹, the undertaker is guilty of an offence¹².

If the Agency becomes aware: (a) that a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into an agreement¹³; and (b) that the sewerage undertaker has not referred to the Agency any question which it is required to refer to the Agency¹⁴, it may proceed as if the required reference had been made¹⁵. If the Agency becomes aware that any consent has been given or agreement entered into with respect to any such operations as are mentioned in head (1) above without the sewerage undertaker in question having referred to the Agency any question which it is required to refer¹⁶, the Agency may exercise its powers of review¹⁷.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'owner' see PARA 1004 note 9.

3 As to the meaning of 'trade premises' see PARA 1047 note 1.

4 I.e. an agreement under the Water Industry Act 1991 s 129: see PARA 1053. As to special category effluent see PARA 1059 note 4. See also PARA 1047 note 3.

5 As to the Environment Agency see PARA 68 et seq.

6 Water Industry Act 1991 s 130(1) (amended by the Environment Act 1995 Sch 22 para 108). Every reference must be made in writing and must be accompanied by a copy of the proposed agreement: Water Industry Act 1991 s 130(3). It is the duty of a sewerage undertaker, on making a reference, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether it is the owner or occupier who is proposing to be a party to the agreement: s 130(4).

7 Water Industry Act 1991 s 130(1)(a).

8 Water Industry Act 1991 s 130(1)(b).

9 As to the meaning of 'notice' see PARA 1037 note 2.

- 10 Water Industry Act 1991 s 130(2) (amended by the Environment Act 1995 Sch 22 para 108).
- 11 le required by the Water Industry Act 1991 s 130(1)(a): see the text and note 7.
- 12 Water Industry Act 1991 s 130(7) (added by the Environment Act 1995 Sch 22 para 108). A sewerage undertaker that is guilty of an offence is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum; (2) on conviction on indictment, to a fine: Water Industry Act 1991 s 130(7) (as so added). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.
- 13 Water Industry Act 1991 s 130(8)(a) (s 130(8) added by the Environment Act 1995 Sch 22 para 108). See also note 12. The reference in the text is a reference to any such agreement as is mentioned in the Water Industry Act 1991 s 130(1): see the text and notes 1-8.
- 14 Water Industry Act 1991 s 130(8)(b) (as added: see note 13). See also note 12.
- 15 Water Industry Act 1991 s 130(8) (as added: see note 13). See also note 12.
- 16 le required by the Water Industry Act 1991 s 130(1)(a): see the text and note 7.
- 17 Water Industry Act 1991 s 130(9) (added by the Environment Act 1995 Sch 22 para 108). See also note 12. The powers of review referred to in the text are the powers under the Water Industry Act 1991 s 127 (see PARA 1061) or, as the case may be, s 131 (see PARA 1063), notwithstanding anything in s 127(2) or s 131(2): s 130(9) (as so added).

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1063. Review by the Environment Agency of agreements relating to special category effluent.

Where any person, as the owner¹ or occupier of any trade premises², is for the time being³ a party to any agreement⁴ with respect to, or to any matter connected with, the reception or disposal of special category effluent⁵, the Environment Agency⁶ may review the questions⁷: (1) whether the operations which, for the purposes of or in connection with the reception or disposal of that effluent, are carried out in pursuance of the agreement ought to be prohibited⁸; and (2) whether, if they are not prohibited, any requirements ought to be imposed as to the conditions on which they are carried out⁹.

The Agency may not review any such question unless¹⁰:

- 2270 (a) the agreement by virtue of which the operations in question are carried out has not previously been the subject-matter of a review and was entered into before 1 September 1989¹¹ or in contravention¹² of the duty to give effect to a determination by the Agency on a reference or review¹³;
- 2271 (b) a period of more than two years has elapsed since the time, or last time, when notice of the Agency's determination on any reference or review relating to that agreement was served¹⁴ on the owner or occupier of the trade premises in question¹⁵; or
- 2272 (c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice relating to discharge¹⁶ in the agreement by virtue of which the operations in question are carried out¹⁷.

These provisions¹⁸ do not apply if the review is carried out: (i) for the purpose of enabling Her Majesty's government in the United Kingdom to give effect to any European Union obligation or to any international agreement to which the United Kingdom¹⁹ is for the time being a party²⁰; or (ii) for the protection of public health or of flora and fauna dependent on an aquatic environment²¹.

1 As to the meaning of 'owner' see PARA 1004 note 9.

2 As to the meaning of 'trade premises' see PARA 1047 note 1.

3 I.e. whether or not in accordance with a notice under the Water Industry Act 1991 s 132: see PARA 1064. As to the meaning of 'notice' see PARA 1037 note 2.

4 I.e. an agreement under the Water Industry Act 1991 s 129: see PARA 1053. References in s 131 to an agreement include references to an agreement as varied from time to time by a notice under s 132 (see PARA 1064): s 131(4).

5 As to special category effluent see PARA 1059 note 4. See also PARA 1047 note 3.

6 As to the Environment Agency see PARA 68 et seq.

7 Water Industry Act 1991 s 131(1) (s 131(1), (2) amended by the Environment Act 1995 Sch 22 para 109).

8 Water Industry Act 1991 s 131(1)(a).

9 Water Industry Act 1991 s 131(1)(b).

10 Water Industry Act 1991 s 131(2) (as amended: see note 7). This provision is expressed to be subject to s 131(3) (see the text and notes 20-21): see s 131(2) (as so amended).

11 Ie the transfer date for the purposes of the Water Act 1989 s 4(1) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 108): Water Authorities (Transfer of Functions) (Appointed Day) Order 1989, SI 1989/1530, arts 1, 2.

12 As to the meaning of 'contravention' see PARA 1004 note 4.

13 Water Industry Act 1991 s 131(2)(a). The duty referred to in the text is the duty under s 133 (see PARA 1065): see s 131(2)(a).

14 Ie under the Water Industry Act 1991 s 132: see PARA 1064.

15 Water Industry Act 1991 s 131(2)(b) (as amended: see note 7).

16 Ie a notice under the Water Industry Act 1991 s 132: see PARA 1064.

17 Water Industry Act 1991 s 131(2)(c).

18 Ie the Water Industry Act 1991 s 131(2).

19 As to the meaning of 'United Kingdom' see PARA 1 note 2.

20 Water Industry Act 1991 s 131(3)(a).

21 Water Industry Act 1991 s 131(3)(b).

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1064. References and reviews relating to special category effluent.

On a reference to the Environment Agency¹ or a review by the Agency² in relation to special category effluent³, it is the duty of the Agency before determining the questions which are the subject-matter of the reference or review⁴:

- 2273 (1) to give an opportunity of making representations or objections to the Agency: (a) to the sewerage undertaker⁵ in question; and (b) to the owner⁶ or the occupier of the trade premises⁷ in question, according to whether it is the owner or the occupier of those premises who is proposing to be, or is, the person making the discharges or, as the case may be, a party to the agreement⁸; and
- 2274 (2) to consider any representations or objections which are duly made to the Agency with respect to those questions by a person to whom the Agency is required to give such an opportunity and which are not withdrawn⁹.

On determining any question on a reference¹⁰ or review¹¹, the Agency must serve notice¹² on the sewerage undertaker in question and on the person specified in head (1)(b) above¹³. Such a notice must state, according to what has been determined:

- 2275 (i) that the discharges or operations to which, or to the proposals for which, the reference or review relates, or such of them as are specified in the notice, are to be prohibited¹⁴; or
- 2276 (ii) that those discharges or operations, or such of them as are so specified, are to be prohibited except in so far as they are made or carried out in accordance with conditions which consist in or include conditions so specified¹⁵; or
- 2277 (iii) that the Agency has no objection to those discharges or operations and does not intend to impose any requirements as to the conditions on which they are made or carried out¹⁶.

Such a notice, in addition to containing such provision as is specified in heads (i) to (iii) above, may do one or both of the following¹⁷: (A) vary or revoke the provisions of a previous notice with respect to the discharges or operations in question¹⁸; and (B) for the purpose of giving effect to any prohibition or other requirement contained in the notice, vary or revoke any consent¹⁹ or any agreement²⁰.

1 le under the Water Industry Act 1991 s 120 (see PARA 1059), s 123 (see PARA 1060) or s 130 (see PARA 1062): see s 132(1)(a) (s 132(1) amended by the Environment Act 1995 Sch 22 para 110). As to the Environment Agency see PARA 68 et seq.

2 le under the Water Industry Act 1991 s 127 (see PARA 1061) or s 131 (see PARA 1063): see s 132(1)(b) (as amended: see note 1).

3 As to special category effluent see PARA 1059 note 4. See also PARA 1047 note 3.

4 Water Industry Act 1991 s 132(2) (s 132(2) amended by the Environment Act 1995 Sch 22 para 110).

5 As to sewerage undertakers see PARA 999.

- 6 As to the meaning of 'owner' see PARA 1004 note 9.
- 7 As to the meaning of 'trade premises' see PARA 1047 note 1.
- 8 Water Industry Act 1991 s 132(2)(a) (as amended: see note 4).
- 9 Water Industry Act 1991 s 132(2)(b) (as amended: see note 4).
- 10 See note 1.
- 11 See note 2.
- 12 As to the meaning of 'notice' see PARA 1037 note 2.
- 13 Water Industry Act 1991 s 132(3) (amended by the Environment Act 1995 Sch 22 para 110). The Agency must send a copy of every notice served under the Water Industry Act 1991 s 132 to the Water Services Regulation Authority: s 132(8) (amended by the Environment Act 1995 Sch 22 para 110; and the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.
- 14 Water Industry Act 1991 s 132(4)(a).
- 15 Water Industry Act 1991 s 132(4)(b). Nothing in s 121(1) or s 121(2) (see PARA 1049) may be construed as restricting the power of the Agency, by virtue of s 132(4)(b), to specify such conditions as the Agency considers appropriate in a notice under s 132: s 132(6) (amended by the Environment Act 1995 Sch 22 para 110).
- 16 Water Industry Act 1991 s 132(4)(c) (amended by the Environment Act 1995 Sch 22 para 110).
- 17 Water Industry Act 1991 s 132(5). This provision is expressed to be without prejudice to s 133 (see PARA 1065): see s 132(5).
- 18 Water Industry Act 1991 s 132(5)(a).
- 19 Ie a consent under the Water Industry Act 1991 Pt IV Ch III (ss 118-141).
- 20 Water Industry Act 1991 s 132(5)(b). The agreement referred to in the text is an agreement under s 129 (see PARA 1053): see s 132(5)(b).

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1065. Effect of determination on reference or review and compensation in respect of determinations.

Where, on a reference or review, a notice of determination¹ has been served by the Environment Agency² on a sewerage undertaker³, it is the duty of the undertaker and, in relation to that undertaker, of the Water Services Regulation Authority⁴, so to exercise certain powers⁵ as to secure compliance with the provisions of the notice⁶. A sewerage undertaker which fails to perform such a duty is guilty of an offence⁷. The Agency may, for the purpose of securing compliance with the provisions of a notice⁸, by serving notice on the sewerage undertaker in question and on the specified person⁹, vary or revoke any consent to make discharges of any special category effluent¹⁰, or any agreement with respect to the disposal of trade effluent¹¹.

The Agency is liable to pay compensation to the relevant person¹² in respect of any loss or damage¹³ sustained by that person as a result of any notice¹⁴ containing the Agency's determination on a review which has been carried out for the protection of public health or of flora and fauna dependent on an aquatic environment and which, but for being so carried out, would have been prohibited¹⁵. However, the Agency is not required to pay any such compensation if the determination in question is shown to have been given¹⁶ in consequence of: (1) a change of circumstances which could not reasonably have been foreseen at the time when the specified period began to run¹⁷; or (2) consideration of material information which was not reasonably available to the Agency at that time¹⁸.

1 I.e a notice under the Water Industry Act 1991 s 132: see PARA 1064. As to the meaning of 'notice' see PARA 1037 note 2.

2 As to the Environment Agency see PARA 68 et seq.

3 As to sewerage undertakers see PARA 999.

4 As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

5 I.e the following powers: (1) in relation to a sewerage undertaker, its power to give a consent under the Water Industry Act 1991 Pt IV Ch III (ss 118-141), any of its powers under s 121 (see PARA 1049) or s 124 (see PARA 1050) and any power to enter into or vary an agreement under s 129 (see PARA 1053); and (2) in relation to the Authority, any of its powers under Pt IV Ch III: s 133(2) (s 133(1), (2) amended by the Water Act 2003 s 36(2)). Nothing in the Water Industry Act 1991 s 121(1) or s 121(2) (see PARA 1049) may be construed as restricting the power of a sewerage undertaker, for the purpose of complying with s 133, to impose any condition specified in a notice under s 132 (see PARA 1064): s 133(3).

6 Water Industry Act 1991 s 133(1) (as amended: see note 5). No person is entitled to any compensation under s 125 (see PARA 1050) in respect of anything done in pursuance of s 133: s 134(3).

7 Water Industry Act 1991 s 133(5) (s 133(5), (6) added by the Environment Act 1995 Sch 22 para 111). A sewerage undertaker that is guilty of an offence is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum; (2) on conviction on indictment, to a fine: Water Industry Act 1991 s 133(5) (as so added). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

8 I.e a notice under the Water Industry Act 1991 s 132: see PARA 1064.

9 I.e the person specified in the Water Industry Act 1991 s 132(2)(a)(ii): see PARA 1064.

10 le a consent given under the Water Industry Act 1991 Pt IV Ch III. As to special category effluent see PARA 1059 note 4. See also PARA 1047 note 3.

11 Water Industry Act 1991 s 133(6) (as added: see note 7). See also note 7. The agreement referred to in the text is an agreement under s 129 (see PARA 1053): see s 133(6).

12 For these purposes, the 'relevant person', in relation to a review, means the owner or the occupier of the trade premises in question, according to whether it is the owner or the occupier who makes the discharges to which the review relates or, as the case may be, is a party to the agreement to which it relates: Water Industry Act 1991 s 134(4). As to the meaning of 'trade premises' see PARA 1047 note 1. As to the meaning of 'owner' see PARA 1004 note 9.

13 As to the meaning of 'damage' see PARA 1018 note 16.

14 le a notice under the Water Industry Act 1991 s 132: see PARA 1064.

15 Water Industry Act 1991 s 134(1) (s 134(1), (2) amended by the Environment Act 1995 Sch 22 para 112). The reference to reviews which would have been prohibited is a reference to the reviews prohibited under the Water Industry Act 1991 s 127(2) (see PARA 1061) or s 131(2) (see PARA 1063): see s 134(1) (as so amended).

16 Water Industry Act 1991 s 134(2) (as amended: see note 15).

17 Water Industry Act 1991 s 134(2)(a). The specified period is the period of two years mentioned in s 127(2) (see PARA 1061) or, as the case may be, s 131(2) (see PARA 1063): see s 134(2)(a).

18 Water Industry Act 1991 s 134(2)(b) (as amended: see note 15).

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1066. Power of the Environment Agency to acquire information for the purpose of its functions in relation to special category effluent.

For the purpose of the discharge of its functions under Part IV Chapter III of the Water Industry Act 1991¹ in relation to special category effluent², the Environment Agency³ may, by notice⁴ in writing served on any person, require that person to furnish such information⁵ specified in the notice as the Agency reasonably considers it needs, in such form and within such period following service of the notice, or at such time, as is so specified⁶.

A person who: (1) fails, without reasonable excuse, to comply with a requirement so imposed⁷; or (2) in furnishing any information in compliance with such a requirement, makes any statement which he knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular⁸, is guilty of an offence⁹.

¹ ie the Water Industry Act 1991 Pt IV Ch III (ss 118-141). As to the meaning of 'functions' see PARA 1004 note 4.

² As to special category effluent see PARA 1059 note 4. See also PARA 1047 note 3.

³ As to the Environment Agency see PARA 68 et seq.

⁴ As to the meaning of 'notice' see PARA 1037 note 2.

⁵ As to the meaning of 'information' see PARA 1006 note 13.

⁶ Water Industry Act 1991 s 135A(1) (s 135A added by the Environment Act 1995 Sch 22 para 113).

⁷ Water Industry Act 1991 s 135A(2)(a) (as added: see note 6). The requirements referred to in the text are requirements imposed under s 135A(1): see the text and note 6.

⁸ Water Industry Act 1991 s 135A(2)(b) (as added: see note 6).

⁹ Water Industry Act 1991 s 135A(2) (as added: see note 6). A person guilty of an offence under s 135A(2) is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum; (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both: s 135A(3) (as so added). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

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(vii) Protection of Public Sewers

1067. Protection of sewers generally.

The general protection afforded by law to property protects public sewers from criminal damage¹, from damage by excessively heavy vehicles², and from negligent acts³.

Special provision has been made for the protection of sewers in connection with the construction of the Channel Tunnel⁴.

1 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 333 et seq.

2 See **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 307 et seq.

3 See **NEGLIGENCE** vol 78 (2010) PARA 1 et seq.

4 See the Channel Tunnel Act 1987 s 45, Sch 7 Pt V.

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1068. Passing of injurious matter into public sewers.

No person may throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer¹, or into any drain or sewer² communicating with a public sewer³: (1) any matter likely to injure the sewer or drain, to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of its contents⁴; or (2) any such chemical refuse or waste steam, or any such liquid of a temperature higher than 43° Celsius, as is a prohibited substance⁵; or (3) any petroleum spirit or carbide of calcium⁶. A person who contravenes any of these provision⁷ is guilty of an offence⁸.

For the purpose of the operation and enforcement of these provisions, no account is to be taken of any radioactivity possessed by any substance⁹.

1 As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7.

2 As to the meanings of 'sewer' and 'drain' see PARA 998.

3 Water Industry Act 1991 s 111(1). This provision is expressed to be subject to the provisions of Pt IV Ch III (ss 118-141): see s 111(1). Nothing in s 111 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4.

4 Water Industry Act 1991 s 111(1)(a). See also *Solicitors of Metropolitan Board of Works v Eaton* (1884) 48 JP 611, DC (forcing mud into sewer by means of water).

5 Water Industry Act 1991 s 111(1)(b) (amended by the Water Act 2003 Sch 7 Pt 3 para 39(1), (2)(a)).

For these purposes, chemical refuse, waste steam or a liquid of a temperature higher than that mentioned in the Water Industry Act 1991 s 111(1) is a prohibited substance if (either alone or in combination with the contents of the sewer or drain in question) it is or, in the case of the liquid, is when so heated: (1) dangerous; (2) the cause of a nuisance; or (3) injurious, or likely to cause injury, to health: s 111(2).

6 Water Industry Act 1991 s 111(1)(c). For these purposes, the expression 'petroleum spirit' means any such:

198 (1) crude petroleum;

199 (2) oil made from petroleum or from coal, shale, peat or other bituminous substances; or

200 (3) product of petroleum or mixture containing petroleum,

as, when tested in the manner prescribed by or under the Petroleum (Consolidation) Act 1928 (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARAS 1625-1626), gives off an inflammable vapour at a temperature of less than 23° Celsius: Water Industry Act 1991 s 111(5) (amended by the Water Act 2003 Sch 7 Pt 3 para 39(1), (2)(b)).

7 Ie the provisions of the Water Industry Act 1991 s 111.

8 Water Industry Act 1991 s 111(3). A person guilty of an offence is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum and to a further fine not exceeding £50 for each day on which the offence continues after conviction; (2) on conviction on indictment, to imprisonment for a term not exceeding

two years or to a fine or to both: s 111(3). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. For the purposes of so much of s 111(3) as makes provision for the imposition of a daily penalty: (a) the court by which a person is convicted of the original offence may fix a reasonable date from the date of conviction for compliance by the defendant with any directions given by the court; and (b) where a court has fixed such a period, the daily penalty must not be imposed in respect of any day before the end of that period: s 111(4).

9 See the Radioactive Substances Act 1993 s 40(1), (2), Sch 3 para 8; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1463 et seq.

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(viii) Sewage Disposal

1069. Duty not to create a nuisance.

A sewerage undertaker¹ must so discharge its functions² in relation to the adoption of sewers³ and disposal works, requirements as to proposed sewers and drains⁴, use of highway drains as sewers, and closure or restriction on use of public sewers⁵, as not to create a nuisance⁶. If the sewerage undertaker is responsible for creating or continuing a nuisance which is actionable independently of this provision, it is liable for it, and it is no defence to show that it is performing those statutory functions⁷. The sewerage undertaker is not responsible for creating or continuing a nuisance which it cannot prevent without constructing new sewers if the nuisance is caused by the discharge by other persons of sewage into the sewers and not by the construction or maintenance of the sewers by the undertaker; for example, if the nuisance is caused, without any fault of the undertaker, by the exercise of prescriptive rights to drain through the sewer into a stream, or by a sewer that has become inadequate because of increased building in the district which the undertaker cannot control⁸. Nor is it responsible to a member of the public who suffers damage through the exercise of his right to use the sewer⁹.

Where the sewerage undertaker is not responsible for creating or continuing a nuisance, it is not liable to a claim in respect of its statutory functions relating to sewerage unless it is guilty of negligence¹⁰; thus it is not liable for involuntary escapes (as opposed to discharges) of sewage unless either it is liable in nuisance or is guilty of negligence¹¹.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'functions' see PARA 1004 note 4.

3 As to the meaning of 'sewer' see PARA 998.

4 As to the meaning of 'drain' see PARA 998.

5 The provisions referred to in the text are those of the Water Industry Act 1991 ss 102-105 (see PARA 1004 et seq), s 112 (see PARA 1080), s 115 (see PARA 1046) and s 116 (see PARA 1036). As to the meaning of 'public sewer' see PARA 1000.

6 Water Industry Act 1991 s 117(6). Works which will be a nuisance may be restrained by injunction even if without them a large population will suffer by lack of drainage (*A-G v Birmingham Borough Council* (1858) 4 K & J 528), but an injunction cannot be obtained if a trifling inconvenience is suffered (*Lillywhite v Trimmer* (1867) 36 LJ Ch 525). Although the undertaker is unprotected in respect of the nuisance, the statutory authority to construct and maintain the works is not eliminated: *R v Parlby* (1889) 22 QBD 520 at 523, DC, per Wills J. The exclusion of claims in nuisance does not apply to claims in negligence and such claims must encompass remedies for breaches of human rights obligations: see *Dobson v Thames Water Utilities Ltd* [2009] EWCA Civ 28, [2009] 3 All ER 319; and PARA 1010. As to nuisances generally see **NUISANCE**. As to injunctions to restrain nuisances see **NUISANCE** vol 78 (2010) PARA 230 et seq. See also **CIVIL PROCEDURE** vol 11 (2009) PARA 492.

As to the possibility that escapes of water from sewerage systems could be prosecuted as waste management offences see *R (on the application of Thames Water Utilities Ltd) v Bromley Magistrates' Court* [2008] EWHC 1763 (Admin), [2009] 1 All ER 744; and PARAS 291, 623.

7 *A-G v Birmingham Borough Council* (1858) 4 K & J 528; *Glossop v Heston and Isleworth Local Board* (1878) 12 ChD 102 at 116, CA, per James LJ, and at 127 per Cotton LJ; *Hobart v Southend-on-Sea Corp'n* (1906) 75 LJB 305 (settled on appeal 22 TLR 530, CA); *Foster v Warblington UDC* [1906] 1 KB 648, CA; *Owen v Faversham Corp'n* (1908) 73 JP 33, CA; *Price's Patent Candle Co Ltd v LCC* [1908] 2 Ch 526, CA (affd sub nom *LCC v Prices*

Candle Co Ltd (1911) 75 JP 329, HL); *Jones v Llanrwst UDC* [1911] 1 Ch 393; *Haigh v Deudraeth RDC* [1945] 2 All ER 661; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA. These cases concern the discharge of sewage into watercourses or the sea. For other examples see *Grand Junction Canal Co v Shugar* (1871) 6 Ch App 483 (abstraction of water); *Bathurst Borough v Macpherson* (1879) 4 App Cas 256, PC (neglect to repair drain); *Touzeau v Slough Urban District* (1896) 60 JP 103 (sewer constructed so that sewage overflowed); *Hanley v Edinburgh Corp* [1913] AC 488, HL (sewer dammed back by culvert); *Bainbridge v Chertsey Urban Council* (1914) 84 LJ Ch 626 (sewage farm). See also *Hesketh v Birmingham Corp* [1924] 1 KB 260, CA; and see *Boome v Bromley RDC* (1905) 69 JP Jo 533. The undertaker may be liable for nonfeasance: *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* above. If the undertaker creates an actionable nuisance and intends to continue it, an injunction will be granted except in special circumstances, but its operation may be suspended: *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd*. An injunction will not be granted if the court is not satisfied that it can be carried out: *A-G v Dorking Union Guardians* (1882) 20 ChD 595, CA; *A-G v Clerkenwell Vestry* [1891] 3 Ch 527; *Earl of Harrington v Derby Corp* [1905] 1 Ch 205. The undertaker is not liable in nuisance for damage caused by the presence of a sewer properly laid across a river bed which has since eroded: see *Radstock Co-operative and Industrial Society Ltd v Norton-Radstock UDC* [1968] Ch 605, [1968] 2 All ER 59, CA. See also *Papworth v Battersea Borough Council* [1916] 1 KB 583, CA. See further **NUISANCE** vol 78 (2010) PARA 173 et seq.

The common law of nuisance should not be used to impose on a sewerage undertaker obligations which are inconsistent with the duties already imposed on it under the Water Act 1991: *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66, [2004] 2 AC 42, [2004] 1 All ER 135. See also *Ministry of Defence v Thames Water Utilities Ltd* [2006] EWCA Civ 1620, [2006] All ER (D) 391 (Nov).

8 *Smeaton v Ilford Corp* [1954] Ch 450, [1954] 1 All ER 923; *Dunne v North Western Gas Board* [1964] 2 QB 806, [1963] 3 All ER 916, CA. See also *Glossop v Heston and Isleworth Local Board* (1878) 12 ChD 102, CA; *A-G v Dorking Union Guardians* (1882) 20 ChD 595, CA; *Earl of Harrington v Derby Corp* [1905] 1 Ch 205; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA; and cf *Hawthorn Corp v Kannuluik* [1906] AC 105, PC. A sewerage undertaker may be liable for discharging sewage into a stream if the inhabitants' right is merely to drain into the sewer and not into the stream (*Jones v Llanrwst UDC* [1911] 1 Ch 393), if the sewage can be so discharged as not to be a nuisance (*Hobart v Southend-on-Sea Corp* (1906) 75 LJKB 305 at 309 per Buckley J), or if the nuisance can be abated by stopping up a connection through which foul water is unlawfully passed (*Charles v Finchley Local Board* (1883) 23 ChD 767).

9 Eg where sewage from the sewer is forced back through the connecting pipe into the claimant's premises, the sewerage undertaker is not liable unless it is guilty of negligence: *Stretton's Derby Brewery Co Ltd v Derby Corp* [1894] 1 Ch 431. See also *Robinson v Workington Corp* [1897] 1 QB 619, CA.

10 *Stretton's Derby Brewery Co Ltd v Derby Corp* [1894] 1 Ch 431; *Lambert v Lowestoft Corp* [1901] 1 KB 590; cf *Papworth v Battersea Borough Council* [1916] 1 KB 583, CA; and see note 9; but see also note 8. The remedy for damage caused by the lawful exercise of powers under the relevant sewerage provisions of the Water Industry Act 1991 is a claim for compensation under s 180, Sch 12: see PARA 1030. As to the relevant sewerage provisions see PARA 1027 note 5. The exercise of statutory sewerage functions which create a nuisance may give rise to liability without allegations of negligence: see eg *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA. The connection and discharge of a sewer to a new sewer of smaller bore is evidence of negligence: *Brown v Sargent* (1858) 1 F & F 112.

11 *Gordon v St James, Westminster, Vestry* (1865) 13 LT 511; *Smeaton v Ilford Corp* [1954] Ch 450, [1954] 1 All ER 923.

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1070. Purification of foul water.

A sewerage undertaker¹ is not authorised by the statutory provisions relating to adoption of sewers² and disposal works, communication with public sewers³, protection of the sewerage system, and use of pipes⁴ for sewerage purposes⁵, to construct or use any public or other sewer, or any drain⁶ or outfall for the purpose of conveying foul water⁷ into any natural or artificial stream, watercourse⁸, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake⁹.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'sewer' see PARA 998.

3 As to the meaning of 'public sewer' see PARA 1000.

4 As to the meaning of 'pipe' see PARA 998.

5 As to the provisions of the Water Industry Act 1991 ss 102-109 (see PARAS 1004-1007, 1041-1044), and ss 111-116 (see PARAS 1036, 1046, 1068, 1074, 1080-1081).

6 As to the meaning of 'drain' see PARA 998.

7 Water containing tar acid from a road has been held to be 'filthy water' and its discharge not justified under a similar provision: *Dell v Chesham UDC* [1921] 3 KB 427.

8 As to the meaning of 'watercourse' see PARA 1004 note 4.

9 Water Industry Act 1991 s 117(5). This implies a power to discharge a surface water sewer into a watercourse so long as the purity and quality are not affected: *Durrant v Branksome UDC* [1897] 2 Ch 291, CA; *Maxwell Willshire v Bromley RDC* (1917) 87 LJ Ch 241. The sewerage undertaker may be restrained if the purity of the stream is affected merely at the point of discharge: *A-G v Ringwood RDC* (1928) 92 JP 65. See also PARA 282; **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 195. Nothing in the relevant sewerage provisions authorises a sewerage undertaker injuriously to affect: (1) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or (2) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream, without the consent of any person who would, apart from the Water Industry Act 1991, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder: s 186(3). As to the meaning of 'relevant sewerage provisions' see PARA 1027 note 5.

There are also offences of polluting controlled waters, including allowing poisonous, noxious or polluting matter or any solid waste matter or trade effluent or sewage effluent to enter controlled waters: see the Water Resources Act 1991 s 85; and PARA 291. See also *Environment Agency (formerly National Rivers Authority) v Empress Car Co (Abertillery) Ltd* [1999] 2 AC 22, sub nom *Empress Car Co (Abertillery) Ltd v National Rivers Authority* [1998] 1 All ER 481, HL (effect of third party actions in the context of causing pollution); and see *Alphacell Ltd v Woodward* [1972] AC 824, [1972] 2 All ER 475, HL. As to controlled waters see PARA 289.

As to the defence under the Water Resources Act 1991 s 87 that the breach was caused by an illegal discharge to the sewer that the sewerage undertaker could not reasonably have been expected to prevent see PARA 296.

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1071. Sewage disposal works.

On the privatisation of the water industry¹, sewage disposal works² vested in sewerage undertakers³. Also vested are sewage disposal works constructed by the sewerage undertaker⁴ or vested in it in pursuance of arrangements with a relevant authority⁵ and sewage disposal works with respect to which a vesting declaration⁶ has taken effect⁷. The sewerage undertaker has wide powers to provide a sewerage system⁸ which may include the construction of sewage disposal works⁹, the acquisition by purchase, lease or otherwise of any sewage disposal works¹⁰, or the adoption or agreement to adopt sewage disposal works¹¹.

1 See **WATER AND WATERWAYS** vol 100 (2009) PARA 108.

2 As to the meaning of 'sewage disposal works' see PARA 998.

3 As to the transfer of sewage functions to sewerage undertakers see PARA 1001. As to sewerage undertakers see PARA 999.

4 See the Water Industry Act 1991 s 179(1)(b); and PARA 1003.

5 See the Water Industry Act 1991 s 97; and PARA 1013. As to the meaning of 'relevant authority' see PARA 1013 note 1.

6 Ie under the Water Industry Act 1991 Pt IV Ch II (ss 98-117).

7 See the Water Industry Act 1991 s 179(2)(a); and PARA 1003.

8 Ie under the Water Industry Act 1991 s 94: see PARA 1010.

9 As to the meaning of 'construction of any sewage disposal works' see PARA 1004 note 10.

10 As to compensation for the depreciation of neighbouring land see *Russell v Bradfield RDC* (1957) 8 P & CR 432, Lands Tribunal; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501 et seq. As to the power of sewerage undertakers to acquire land compulsorily see the Acquisition of Land Act 1981 ss 10-15, s 34(1), Sch 4 para 1; the Water Industry Act 1991 s 155; *Royco Homes Ltd v Eatonwill Construction Ltd* [1979] Ch 276, [1978] 2 All ER 821; PARA 1031; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501 et seq; **WATER AND WATERWAYS** vol 101 (2009) PARA 453.

11 See the Water Industry Act 1991 s 102(1)(b) (see PARA 1004) and s 104(1)(b) (see PARA 1006).

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1072. Use of sludge on agricultural land.

Sludge¹ from sewerage plants may be used² on agricultural land, subject to provisions as to its treatment and application³. Any occupier of agricultural land where sludge has been used, other than by the sludge producer, must furnish certain information as to its use to the sludge producer⁴ and the sludge producer must keep a register containing records as to quantity, composition and destination of sludge⁵ and make the register available for inspection by the Environment Agency at all reasonable times⁶. Any person who contravenes any of these provisions is guilty of an offence⁷.

1 'Sludge' means residual sludge from sewage plants treating domestic or urban waste waters and from other sewage plants treating waste waters of a composition similar to domestic and urban waste waters: Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, reg 2(1). See also generally **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 969 et seq.

2 'Use' means spreading on the soil or any other application on or in the soil; and 'used' is to be construed accordingly: Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, reg 2(1).

3 See the Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, reg 3. The sludge must be tested before it may be used: see reg 3(2), Sch 1. The sludge producer must provide details of the analysis made under Sch 1 to all persons to whom he supplies sludge: reg 7(2). The soil on the land must also be tested and assessed before any sludge is used: see reg 3(2), Sch 2 (amended by SI 1996/593; SI 1996/973). 'Sludge producer' means any person who manages a plant at which sludge is produced for disposal: Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, reg 2(1). As to the precautions to be taken after sludge is used see reg 4 (amended by SI 1990/880). There are additional provisions in relation to the use of sludge on dedicated sites: Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, reg 8 (amended by SI 1990/880; SI 1996/593; SI 1996/973; SI 2000/62). 'Dedicated site' means an area of agricultural land which on 17 June 1986 was dedicated to the disposal of sludge but on which commercial food crops were being grown exclusively for animal consumption: Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, reg 2(1).

4 See the Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, reg 5 (amended by SI 1990/880).

5 See the Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, reg 6 (amended by SI 1990/880).

6 See the Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, reg 7(1) (amended by SI 1996/593; SI 1996/973). As to the Environment Agency see PARA 68 et seq.

7 See the Sludge (Use in Agriculture) Regulations 1989, SI 1989/1263, reg 9. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 9. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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(3) PRIVATE SEWERS AND DRAINS

1073. Provision of drainage in relation to buildings etc.

Provisions relating to the drainage of buildings, yards and passages are dealt with elsewhere in this work¹.

¹ See the Building Act 1984 ss 21, 22, 59, 84; and **BUILDING**. As to soil pipes and surface water pipes see s 60; and **BUILDING**.

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1074. Power to investigate defective drain or sewer.

Where it appears to a sewerage undertaker¹ that there are reasonable grounds for believing: (1) that any drain² connecting with a public sewer³, or any private sewer⁴ so connecting, is in such a condition as to be injurious or likely to cause injury to health or as to be a nuisance⁵; or (2) that any such drain or private sewer is so defective as to admit subsoil water⁶, the undertaker may examine the condition of the drain or sewer⁷ and, for that purpose, may apply any test, other than a test by water under pressure and, if the undertaker deems it necessary, open the ground⁸. If on examination the drain or sewer is found to be in proper condition, the undertaker must, as soon as possible, reinstate any ground which has been opened by it and make good any damage done by the undertaker⁹.

1 As to sewerage undertakers see PARA 999.

2 As to the meaning of 'drain' see PARA 998.

3 As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7.

4 As to the meaning of 'private sewer' see PARA 1000 note 4.

5 Water Industry Act 1991 s 114(1)(a).

6 Water Industry Act 1991 s 114(1)(b).

7 As to the meaning of 'sewer' see PARA 998.

8 Water Industry Act 1991 s 114(1). See also the Public Health Act 1936 s 48 (amended by the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 2(1), Sch 3 Pt I).

Nothing in the Water Industry Act 1991 s 114 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'functions' see PARA 1004 note 4. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4.

9 Water Industry Act 1991 s 114(2).

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1075. Notice to remedy stopped-up drain etc.

If it appears to a local authority¹ that on any premises² a drain³, private sewer⁴, water closet⁵, waste pipe or soil pipe is stopped up, it may by notice in writing require the owner⁶ or occupier of the premises to remedy the defect within 48 hours from the service of the notice⁷. If a notice is not complied with, the local authority may itself carry out the work necessary to remedy the defect and may recover the expenses reasonably incurred in so doing from the person on whom the notice was served⁸.

In proceedings to recover the expenses under these provisions, the court may inquire: (1) whether any requirement contained in a notice served⁹ was reasonable¹⁰; and (2) whether the expenses ought to be borne wholly or in part by some person other than the defendant in the proceedings¹¹. The court may make such order concerning the expenses or their apportionment as appears to the court to be just¹². The court may not revise an apportionment unless it is satisfied that all persons affected by the apportionment or by an order made by virtue of head (2) above have had notice of the proceedings and an opportunity of being heard¹³.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'premises' see PARA 1 note 34; definition applied by virtue of the Public Health Act 1961 s 1(1).

3 As to the meaning of 'drain' see PARA 998; definition applied by virtue of the Public Health Act 1961 s 1(1).

4 'Private sewer' means a sewer which is not a public sewer: Public Health Act 1936 s 343(1); definition applied by virtue of the Public Health Act 1961 s 1(1). 'Public sewer' means a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under the Water Act 1989 s 4, Sch 2 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 108) or the Water Industry Act 1991 Sch 2 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 141) or under s 179 (see PARA 1003) or otherwise: Public Health Act 1936 s 343(1) (definition substituted by the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 4).

5 'Water closet' means a closet which has a separate fixed receptacle connected to a drainage system and separate provision for flushing from a supply of clean water either by the operation of mechanism or by automatic action: Public Health Act 1936 s 90(1); definition applied by virtue of the Public Health Act 1961 s 1(1).

6 As to the meaning of 'owner' see PARA 116; definition applied by virtue of the Public Health Act 1961 s 1(1).

7 Public Health Act 1961 s 17(3) (s 17 substituted by the Local Government (Miscellaneous Provisions) Act 1982 s 27(1)). The Public Health Act 1961 s 17 is expressed to be without prejudice to the Building Act 1984 s 59 (see **BUILDING** vol 4(2) (2002 Reissue) PARA 382) which empowers a local authority to serve notices as regards defective drains: Public Health Act 1961 s 17(15) (as so substituted; and amended by the Building Act 1984 Sch 6 para 8). As to the power of the local authority to undertake, at the request of the owner or occupier, the cleaning or repair of drains etc see the Public Health Act 1961 s 22; and PARA 1078. See also, in the case of a private sewer, the alternative provisions of the Local Government (Miscellaneous Provisions) Act 1976 s 35; and PARAS 1076-1077. As to the validity of a notice under the Public Health Act 1961 s 17 where the defect was subsequently found to be on another landowner's property see *Rotherham Metropolitan Borough Council v Dadds* [1986] 2 All ER 867, [1986] 1 WLR 1367, CA.

8 Public Health Act 1961 s 17(4) (as substituted: see note 7). This provision is expressed to be subject to s 17(7) (see note 12) and s 17(8) (see PARA 1078): see s 17(4) (as so substituted).

Where the expenses recoverable by a local authority under s 17(4) do not exceed £10, the local authority may, if it thinks fit, remit the payment of the expenses: s 17(5) (as so substituted). The Secretary of State may by order made by statutory instrument increase any amount specified in s 17: s 17(12) (as so substituted). Nothing

in such an order applies to a notice given under s 17 before the commencement of the order: s 17(13) (as so substituted). A statutory instrument containing an order under s 17(12) is subject to annulment in pursuance of a resolution of either House of Parliament: s 17(14) (as so substituted). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. At the date at which this volume states the law no such statutory instrument had been made.

The expenses are recoverable as a simple contract debt: see the Public Health Act 1936 s 293(1) (amended by the Local Government (Miscellaneous Provisions) Act 1976 s 27(3), Sch 2); Public Health Act 1961 s 1(1). See also PARA 122. It should be noted that, as the expenses are recoverable from the person on whom the notice was served and not from the owner as such, the various powers under the Public Health Act 1936 s 291 (see PARA 123) are not available.

9 le under the Public Health Act 1961 s 17(3): see the text and note 7.

10 Public Health Act 1961 s 17(6)(b)(i) (as substituted: see note 7).

11 Public Health Act 1961 s 17(6)(b)(ii) (as substituted: see note 7).

12 Public Health Act 1961 s 17(7) (as substituted: see note 7). This provision is expressed to be subject to s 17(8) (see PARA 1078 note 11): see s 17(7).

13 Public Health Act 1961 s 17(9) (as substituted: see note 7).

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1076. Notice to remove obstruction from private sewer.

If a private sewer¹ is obstructed at a point within the area of a local authority² (other than a county council in England), the authority may serve on each of the persons who is an owner³ or occupier of premises⁴ served by the sewer, or on each of such of those persons as the authority thinks fit, a notice⁵ requiring the recipients⁶ to remove the obstruction before a specified⁷ time⁸. If an obstruction in respect of which such notices have been served by an authority is not removed within the period specified in the notices, the authority may remove it⁹.

Where an authority has reasonably incurred expenses in removing an obstruction, it may serve on each of the persons on whom it served notice in respect of the obstruction a further notice¹⁰: (1) requiring him to pay to the authority a sum equal to so much of the expenses as is specified in the further notice¹¹; and (2) specifying the other persons on whom notices have been or are to be served in respect of the expenses and the amount specified or to be specified in each of those notices¹². It is the duty of the authority, in determining what amounts to specify in notices to be served by the authority in respect of any expenses, to have regard to any matters which appear to the authority to indicate the cause of the obstruction and, so far as the authority is aware of the obligations, to any obligations to remove the obstruction which arose under agreements between persons on whom the notices are to be served¹³.

Where a local authority has served a notice in relation to expenses incurred in removing an obstruction¹⁴, then: (a) if the person has not appealed against the notice¹⁵ within the specified period, the authority is entitled after the expiration of that period to recover from him the sum specified in the notice¹⁶; and (b) if he has so appealed within that period and the court has not reduced to nil the sum specified in the notice, the authority is entitled after the determination of the appeal to recover from him the sum specified in the notice or, if the court has reduced that sum to a smaller sum, the smaller sum¹⁷.

1 As to the meaning of 'private sewer' see PARA 1075 note 4; definition applied by the Local Government (Miscellaneous Provisions) Act 1976 s 35(7).

2 As to the meaning of 'local authority' see PARA 99.

3 As to the meaning of 'owner' see PARA 116; definition applied by the Local Government (Miscellaneous Provisions) Act 1976 s 35(7).

4 As to the meaning of 'premises' see PARA 1 note 34; definition applied by the Local Government (Miscellaneous Provisions) Act 1976 s 35(7).

5 'Notice' means notice in writing: Local Government (Miscellaneous Provisions) Act 1976 s 44(1).

6 I.e. the recipients of notices in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 35(1): see the text and note 8.

7 The time must be not earlier than 48 hours after the service of the notice or, if different notices in respect of the same obstruction are served in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 35(1) at different times, not earlier than 48 hours after the latest of those times: s 35(1).

8 Local Government (Miscellaneous Provisions) Act 1976 s 35(1) (amended by the Local Government Act 1985 Sch 17; and SI 1996/3071). As notices may be served on owners and occupiers of premises served by the sewer and not merely the owner and occupier of the premises where the blockage occurs, the use of this power

can provide a simpler and fairer method of apportioning the expenses than the use of the Public Health Act 1961 s 17 (see PARA 1075), in relation to a private sewer: see Department of the Environment Circular 9/77.

- 9 Local Government (Miscellaneous Provisions) Act 1976 s 35(2).
- 10 Local Government (Miscellaneous Provisions) Act 1976 s 35(3).
- 11 Local Government (Miscellaneous Provisions) Act 1976 s 35(3)(a).
- 12 Local Government (Miscellaneous Provisions) Act 1976 s 35(3)(b).
- 13 Local Government (Miscellaneous Provisions) Act 1976 s 35(3).
- 14 le a notice under the Local Government (Miscellaneous Provisions) Act 1976 s 35(3): see text and notes 10-13.
- 15 le under the Local Government (Miscellaneous Provisions) Act 1976 s 35(4): see PARA 1077.
- 16 Local Government (Miscellaneous Provisions) Act 1976 s 35(6)(a).
- 17 Local Government (Miscellaneous Provisions) Act 1976 s 35(6)(b).

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1077. Appeal as to expenses of removing obstruction.

A person on whom a notice¹ is served by a local authority² requiring the payment of the expenses of removing an obstruction from a private sewer³ may, within the period of six weeks beginning with the date of service of the notice, appeal to the county court against the notice on the ground that it would be reasonable for the whole or part of the sum specified in the notice to be paid by some other person who is an owner⁴ or occupier of premises⁵ served by the sewer in question⁶.

On such an appeal against a notice, the court must either dismiss the appeal or order that the whole or part of the sum specified in the notice is to be paid to the authority which served the notice by⁷: (1) a person, other than the appellant, who is an owner or occupier of premises served by the sewer in question⁸; or (2) persons, other than the appellant, each of whom is such an owner or occupier, in such proportions as are specified in the order⁹, and the sum specified in the notice may be reduced accordingly¹⁰. However, the court may not order any payment by a person other than the appellant unless that person has, not later than the beginning of the period of eight days ending with that on which the hearing of the appeal is begun, been made a respondent to the appeal in accordance with rules of court¹¹.

1 As to the meaning of 'notice' see PARA 1076 note 5.

2 As to the meaning of 'local authority' see PARA 99.

3 See under the Local Government (Miscellaneous Provisions) Act 1976 s 35(3); see PARA 979. As to the meaning of 'private sewer' see PARA 1075 note 4; definition applied by s 35(7).

4 As to the meaning of 'owner' see PARA 116; definition applied by the Local Government (Miscellaneous Provisions) Act 1976 s 35(7).

5 As to the meaning of 'premises' see PARA 1 note 34; definition applied by the Local Government (Miscellaneous Provisions) Act 1976 s 35(7).

6 Local Government (Miscellaneous Provisions) Act 1976 s 35(4).

7 Local Government (Miscellaneous Provisions) Act 1976 s 35(5).

8 Local Government (Miscellaneous Provisions) Act 1976 s 35(5)(a).

9 Local Government (Miscellaneous Provisions) Act 1976 s 35(5)(b).

10 Local Government (Miscellaneous Provisions) Act 1976 s 35(5). As to the enforcement of payment see s 35(6); and PARA 1076.

11 Local Government (Miscellaneous Provisions) Act 1976 s 35(5).

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1078. Repair etc of drains and private sewers.

If it appears to a local authority¹ that a drain², private sewer³, water closet⁴, waste pipe or soil pipe: (1) is not sufficiently maintained and kept in good repair⁵; and (2) can be sufficiently repaired at a cost not exceeding £250⁶, the local authority may, after giving not less than seven days' notice to the person or persons concerned⁷, cause the drain, private sewer, water closet or pipe to be repaired and recover the expenses reasonably incurred in so doing, so far as they do not exceed £250, from the person or persons concerned, in such proportions, if there is more than one such person, as the local authority may determine⁸. These provisions do not authorise a local authority to carry out works on land which belongs to any statutory undertaker⁹ and is held or used by it for the purposes of its undertaking¹⁰.

In proceedings to recover expenses, the court: (a) must inquire whether the local authority was justified in concluding that the drain, private sewer, water closet, waste pipe or soil pipe was not sufficiently maintained and kept in good repair¹¹; and (b) may inquire whether any apportionment of expenses by the local authority was fair¹². The court may make such order concerning the expenses or their apportionment as appears to the court to be just¹³.

A local authority may, on the application of the owner or occupier of any premises, undertake the cleansing or repair of any drains, water closets, sinks or gullies in or connected with the premises; and it may recover from the applicant such reasonable charge, if any, for so doing as it thinks fit¹⁴.

1 As to the meaning of 'local authority' see PARA 99.

2 As to the meaning of 'drain' see PARA 998; definition applied by virtue of the Public Health Act 1961 s 1(1).

3 As to the meaning of 'private sewer' see PARA 1075 note 4; definition applied by virtue of the Public Health Act 1961 s 1(1).

4 As to the meaning of 'water closet' see PARA 1075 note 5; definition applied by virtue of the Public Health Act 1961 s 1(1).

5 Public Health Act 1961 s 17(1)(a) (s 17 substituted by the Local Government (Miscellaneous Provisions) Act 1982 s 27(1)). As to the repair of underground drains see the Building Act 1984 s 61; and **BUILDING** vol 4(2) (2002 Reissue) PARA 384. As to the disconnection and sealing of disused drains see s 62; and **BUILDING** vol 4(2) (2002 Reissue) PARA 385.

6 Public Health Act 1961 s 17(1)(b) (as substituted: see note 5).

7 'Person concerned' means: (1) in relation to a water closet, waste pipe or soil pipe, the owner or occupier of the premises on which it is situated; and (2) in relation to a drain or private sewer, any person owning any premises drained by means of it and also, in the case of a sewer, the owner of the sewer: Public Health Act 1961 s 17(2) (as substituted: see note 5). As to the meaning of 'premises' see PARA 1 note 34; definition applied by virtue of s 1(1). As to the meaning of 'owner' see PARA 116; definition applied by virtue of s 1(1).

8 Public Health Act 1961 s 17(1) (as substituted: see note 5). This provision is expressed to be subject to s 17(7) (see the text and note 13) and s 17(8) (see note 11): see s 17(1) (as so substituted).

Section 17 is expressed to be without prejudice to the Building Act 1984 s 59 (see **BUILDING** vol 4(2) (2002 Reissue) PARA 382), which empowers a local authority to serve notices as regards defective drains: see the Public Health Act 1961 s 17(15) (as so substituted; and amended by the Building Act 1984 Sch 6 para 8).

Where the expenses recoverable by a local authority under the Public Health Act 1961 s 17(1) do not exceed £10, the local authority may, if it thinks fit, remit the payment of the expenses: s 17(5) (as so substituted). The

Secretary of State may by order made by statutory instrument increase any amount specified in s 17: s 17(12) (as so substituted). Nothing in such an order applies to a notice given under s 17 before the commencement of the order: s 17(13) (as so substituted). A statutory instrument containing an order under s 17(12) is subject to annulment in pursuance of a resolution of either House of Parliament: s 17(14) (as so substituted). As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59. At the date at which this volume states the law no such statutory instrument had been made. As to the recovery of expenses generally see PARAS 122-123.

9 'Statutory undertakers' means any persons authorised by an enactment or statutory order to construct, work or carry on any railway, canal, inland navigation, dock, harbour, tramway, or other public undertaking: Public Health Act 1936 s 343(1) (amended by the Gas Act 1986 Sch 9 Pt I; the Water Act 1989 Sch 27 Pt I; and the Electricity Act 1989 Sch 18); definition applied by virtue of the Public Health Act 1961 s 1(1).

10 Public Health Act 1961 s 17(10) (as substituted: see note 5). This exemption does not apply to houses, or to buildings used as offices or showrooms, other than buildings so used which form part of a railway station: s 17(11) (as so substituted). As to the meaning of 'house' see PARA 1 note 34; definition applied by virtue of s 1(1).

11 Public Health Act 1961 s 17(6)(a)(i) (as substituted: see note 5). Where the court determines that the local authority was not justified in concluding that a drain, private sewer, water closet, waste pipe or soil pipe was not sufficiently maintained and kept in good repair, the local authority may not recover expenses incurred by it under s 17(1): s 17(8) (as so substituted).

12 Public Health Act 1961 s 17(6)(a)(ii) (as substituted: see note 5). The court may not revise an apportionment unless it is satisfied that all persons affected by the apportionment or by an order made by virtue of s 17(6)(b)(ii) (see PARA 1075) have had notice of the proceedings and an opportunity of being heard: s 17(9) (as so substituted).

13 Public Health Act 1961 s 17(7) (as substituted: see note 5). This provision is expressed to be subject to s 17(8) (see note 11); see s 17(7).

14 Public Health Act 1961 s 22.

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1079. Overflowing or leaking cesspools.

If the contents of any cesspool¹ soak away or overflow, the local authority² may by notice require the person by whose act, default or sufferance the soakage or overflow occurred or continued to execute such works, or to take such steps by periodically emptying the cesspool or otherwise, as may be necessary for preventing the soakage or overflow³. In so far as such a notice requires a person to take any steps other than the execution of works, he is, if he fails to comply with the notice, liable to a penalty⁴. However, in any proceedings it is open to the defendant to question the reasonableness of the authority's requirements⁵.

1 'Cesspool' includes a settlement tank or other tank for the reception or disposal of foul matter from buildings: Public Health Act 1936 s 90(1).

2 As to the meaning of 'local authority' see PARA 99.

3 Public Health Act 1936 s 50(1). This provision does not apply in relation to the effluent from a properly constructed tank for the reception and treatment of sewage if the effluent is of such a character, and is so conveyed away and disposed of, as not to be prejudicial to health or a nuisance: s 50(1) proviso. As to the meaning of 'prejudicial to health' see **NUISANCE** vol 78 (2010) PARA 158. In so far as a notice under s 50 requires a person to execute works, the provisions of Pt XII (ss 275-347) with respect to appeals against, and the enforcement of, notices requiring the execution of works apply in relation to the notice: s 50(2).

4 Public Health Act 1936 s 50(3). The penalty is a fine not exceeding level 1 on the standard scale and a further fine not exceeding £2 for each day on which the offence continues after conviction: see s 50(3) (amended by virtue of the Criminal Justice Act 1982 s 46; and the Decimal Currency Act 1969 s 10(1)). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

5 Public Health Act 1936 s 50(3) proviso.

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1080. Construction of sewers and drains by private persons.

The power to construct sewers and drains¹ is incident to the ordinary ownership of land², but where: (1) a person proposes to construct a drain or sewer³; and (2) a sewerage undertaker⁴ considers that the proposed drain or sewer is or is likely to be needed to form part of a general sewerage system which that undertaker provides or proposes to provide⁵, the undertaker may require that person to construct the drain or sewer in a manner differing, as regards material or size of pipes⁶, depth, fall, direction or outfall, or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it⁷. It is the duty of a person on whom requirements are imposed by a sewerage undertaker to comply with those requirements⁸. The duty is owed to the undertaker; and any breach of the duty which causes the undertaker to sustain loss or damage is actionable at the suit of the undertaker⁹. If any person on whom requirements are imposed by a sewerage undertaker is aggrieved by the requirements, he may within 28 days appeal to the Water Services Regulation Authority¹⁰, which may disallow the requirements or allow them with or without modification¹¹.

A sewerage undertaker which exercises the powers conferred on it¹² must: (a) repay to the person constructing the sewer or drain the expenses reasonably incurred by that person in complying with the undertaker's requirements¹³; and (b) until the drain or sewer becomes a public sewer, from time to time repay to that person so much of any expenses reasonably incurred by him in repairing or maintaining the drain or sewer as may be attributable to the undertaker's requirements having been imposed and complied with¹⁴.

These provisions do not apply in relation to so much of any drain or sewer as is proposed to be constructed by any railway undertakers¹⁵ or dock undertakers¹⁶ in or on land which belongs to them and is held or used by them for the purposes of their undertaking¹⁷.

1 As to the meanings of 'sewer' and 'drain' see PARA 998.

2 Landowners may be authorised to execute drainage works on another's land: see the Land Drainage Act 1991 s 22; and **WATER AND WATERWAYS** vol 101 (2009) PARA 587.

3 Water Industry Act 1991 s 112(1)(a). As to references to the construction of a sewer see PARA 1004 note 10.

4 As to sewerage undertakers see PARA 999.

5 Water Industry Act 1991 s 112(1)(b).

6 As to the meaning of 'pipe' see PARA 998.

7 Water Industry Act 1991 s 112(1). Drainage is also controlled by building regulations: see **BUILDING**.

A sewerage undertaker must carry out its functions under s 112 so as not to create a nuisance: s 117(6). Nothing in s 112 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'functions' see PARA 1004 note 4. As to the meaning of 'public sewer' see PARA 1000. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4.

8 Water Industry Act 1991 s 112(4).

9 Water Industry Act 1991 s 112(5).

10 Water Industry Act 1991 s 112(2) (s 112(2), (3) amended by the Competition and Service (Utilities) Act 1992 s 35(1), (10); and the Water Act 2003 s 36(2)). As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

11 Water Industry Act 1991 s 112(3) (as amended: see note 10). As to the meaning of 'modification' see PARA 1007 note 10.

12 le under the Water Industry Act 1991 s 112.

13 Water Industry Act 1991 s 112(6)(a).

14 Water Industry Act 1991 s 112(6)(b).

15 As to the meaning of 'railway undertakers' see PARA 1004 note 9.

16 As to the meaning of 'dock undertakers' see PARA 1004 note 9.

17 Water Industry Act 1991 s 112(7).

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1081. Alteration of drains by sewerage undertaker.

Where any premises have a drain or sewer¹ communicating with a public sewer² or a cesspool³, but that system of drainage, though sufficient for the effectual drainage of the premises, is not adapted to the general sewerage system of the area, or is, in the opinion of the sewerage undertaker for the area⁴, otherwise objectionable, that undertaker may, at its own expense, close the existing drain or sewer and fill up the cesspool, and do any work necessary for that purpose⁵. Such a power conferred on a sewerage undertaker is exercisable on condition only that the undertaker first provides, in a position equally convenient to the owner⁶ of the premises in question, a drain or sewer which is equally effectual for the drainage of the premises and communicates with a public sewer⁷.

A sewerage undertaker which proposes to carry out such work must give notice⁸ of its proposals to the owner of the premises in question⁹, who may, if he is aggrieved by the proposals, whether as regards the position or sufficiency of the sewer or drain proposed to be provided for the drainage of the premises, refer the matter to the Water Services Regulation Authority for determination¹⁰.

The Secretary of State¹¹ may by regulations¹² make provision with respect to consents and the conditions of consents for discharges of trade effluent¹³ into the sewer of a sewerage undertaker through a drain or sewer provided in pursuance of these provisions¹⁴.

1 As to the meanings of 'drain' and 'sewer' see PARA 998.

2 As to the meaning of 'public sewer' see PARA 1000. See also PARA 1041 note 7.

3 For these purposes, 'cesspool' includes a settlement tank or other tank for the reception or disposal of foul matter from buildings: Water Industry Act 1991 s 113(7).

4 As to sewerage undertakers see PARA 999. As to the areas of sewerage undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 138.

5 Water Industry Act 1991 s 113(1). Nothing in s 113 is to be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall: (1) in contravention of any applicable provision of the Water Resources Act 1991 (see **WATER AND WATERWAYS**); or (2) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake: Water Industry Act 1991 s 117(5). As to the meaning of 'functions' see PARA 1004 note 4. As to the meaning of 'contravention' see PARA 1004 note 4. As to the meaning of 'watercourse' see PARA 1004 note 4.

6 As to the meaning of 'owner' see PARA 1004 note 9.

7 Water Industry Act 1991 s 113(2).

8 As to the meaning of 'notice' see PARA 1037 note 2.

9 Water Industry Act 1991 s 113(3).

10 Water Industry Act 1991 s 113(4) (amended by the Competition and Service (Utilities) Act 1992 Sch 2; and the Water Act 2003 s 36(2)). As to the determination see the Water Industry Act 1991 s 30A; and **WATER AND WATERWAYS** vol 100 (2009) PARA 131. As to the Water Services Regulation Authority see **WATER AND WATERWAYS** vol 100 (2009) PARA 109 et seq.

11 As to the Secretary of State see PARA 58. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 59.

12 At the date at which this volume states the law no such regulations had been made but, by virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 Pt I para 1(1), (2), the Control of Pollution (Discharges into Sewers) Regulations 1976, SI 1976/958 (amended by SI 1997/2971) have effect as if so made.

13 As to the meaning of 'trade effluent' see PARA 1047 note 3; definition applied by the Water Industry Act 1991 s 113(7).

14 Water Industry Act 1991 s 113(6).